



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. G. v. Canada Employment Insurance Commission*, 2018 SST 272

Tribunal File Number: AD-17-873

BETWEEN:

**C. G.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Stephen Bergen

Date of Decision: March 26, 2018

## DECISION AND REASONS

### DECISION

[1] The application is refused.

### OVERVIEW

[2] The Applicant (Claimant) left his seasonal employment to return to school. When this did not work out, he sought to return to his employer, but his employer did not rehire him. He applied for Employment Insurance benefits, but he was denied on the basis that he voluntarily left his employment without just cause. The Claimant asked the Respondent (Commission) to reconsider on the basis that he was unaware that he needed authorization before he quit to go to school, but the Commission maintained its decision. He appealed to the General Division of the Social Security Tribunal, but his appeal was dismissed on the basis that the Claimant had reasonable alternatives to voluntarily leaving his employment and therefore did not have just cause. The Claimant now seeks leave to appeal the General Division's decision.

[3] However, I am refusing leave to appeal because the Claimant has not shown his appeal has a reasonable chance of success.

### ISSUE

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it?

### ANALYSIS

#### General principles

[5] The General Division is required to consider and weigh the evidence before it and to make findings of fact. It is also required to apply the law. The law would include the statutory provisions of the *Employment Insurance Act* (Act) and *Employment Insurance Regulations* (Regulations) that are relevant to the issues under consideration, and could also include court

decisions that have interpreted the statutory provisions. Finally, the General Division must reach conclusions on the issues that it must decide, by applying the law to the facts.

[6] The Appeal Division is only permitted to interfere with a decision of the General Division if the General Division has made certain types of errors, which are called “grounds of appeal”.

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division’s conclusion and the result.

[9] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal in order to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.<sup>1</sup>

[10] On initial review of the Claimant’s leave to appeal application, I was not satisfied that the Claimant understood the nature of this appeal or what it was that he needed to establish. I sent a letter dated January 10, 2018, to the Claimant asking him to clarify the grounds of appeal. No response was received.

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<sup>1</sup> *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

**Is there an arguable case that the General Division failed to observe a principle of natural justice, that it erred in law, or that it based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it?**

### **Natural justice**

[11] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision maker and the right of a party to be heard and to know the case against him or her. The Claimant has not raised any concerns about the adequacy of notice of the hearing, pre-hearing disclosure of documents, the manner in which the hearing was conducted, his understanding of the process, or any other action or procedure that could have affected his right to be heard or to answer the case. Nor has he suggested that the General Division member was biased or had prejudged the matter.

### **Error of law**

[12] The Claimant did not argue that the General Division erred in law.

### **Erroneous finding of fact**

[13] The Claimant appealed to the General Division on the basis that he had a good reason for quitting. At the General Division hearing, he argued that his work was seasonal and he wanted to retrain so that he could get full-time work. He believed he would be able to return to his old job if the training did not work out. He also argued that he did not realize he needed to be referred to his program of studies by the Commission or a prescribed authority.

[14] The Claimant raised many of the same issues in his application for leave, but he has failed to identify in what manner the General Division made any finding of fact in a perverse or capricious manner or without regard to the evidence before it. Simply disagreeing with the General Division's findings does not disclose a valid ground under s. 58(1)<sup>2</sup> of the DESD Act, and the re-weighing of evidence is not a ground of appeal with a reasonable chance of success.<sup>3</sup>

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<sup>2</sup> *Griffin v. Canada (Attorney General)*, 2016 FC 874.

<sup>3</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[15] Following the direction of the Federal Court in cases such as *Karadeolian*,<sup>4</sup> I have reviewed the record for evidence that was overlooked or misunderstood. However, I am unable to find an arguable case in relation to such an error.

[16] The evidence was undisputed that the Claimant's employer still had work for him to do at the time that he quit his job, and that the only reason he quit was to attend school. It was on the basis of these undisputed facts that the General Division found that the Claimant did not have just cause. This is consistent with the case law, which confirms that attending school may be an excellent reason for quitting, but it is not just cause. I find that the Claimant has failed to make an arguable case that the General Division's finding was perverse or capricious or made without regard to the material before it.

[17] The appeal has no reasonable chance of success.

## **CONCLUSION**

[18] The application is refused.

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVE:	C. G., Self-represented
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<sup>4</sup> *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.