Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2018 SST 385

Tribunal File Number: AD-17-928

BETWEEN:

A. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: April 6, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant (Claimant) accepted a voluntary retirement package and left her employment on October 31, 2016. At the time, she was concerned about the security of her position and she also expected that she would qualify for Employment Insurance benefits under a workforce reduction process. On December 7, 2016, the Respondent, the Canada Employment Insurance Commission (Commission), denied her application for benefits on the basis that she had voluntarily left her employment without just cause. The Claimant sought reconsideration, but the Commission maintained its decision in a letter dated January 12, 2017. The Claimant next appealed to the General Division, but her appeal was dismissed on the basis that she had reasonable alternatives to leaving.

[3] There is no reasonable chance of success on appeal. I cannot find 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 for the material before it.

ISSUES

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice?

[5] Is there an arguable case that 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?

[6] Is there an arguable case that the General Division erred in law by failing to consider all the circumstances?

ANALYSIS

General Principles

[7] The General Division is required to consider and weigh the evidence before it and to make findings of fact. It is also required to consider the law. The law includes the statutory provisions of the *Employment Insurance Act* (Act) and the *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 apply the law to the facts to reach its conclusions on the issues that it has to decide.

[8] The appeal to the General Division was unsuccessful and the application now comes before the Appeal Division. The Appeal Division is permitted to interfere with a General Division decision only if the General Division has made certain types of errors, which are called "grounds of appeal".

[9] Subsection 58 (1) of the *Department of Employment and Social Development 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.

[10] 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.

[11] 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.[1]

Issue 1: Did the General Division fail to observe a principle of natural justice?

[12] In her application for leave to appeal, the Claimant indicated that the General Division had failed to observe a principle of natural justice or acted beyond or refused to exercise its jurisdiction. However, the only argument advanced by the Claimant that appears to have any relationship to natural justice is that the Commission had accepted or may have accepted that other claimants in similar or identical circumstances qualified for benefits under the workforce reduction process, whereas the Claimant did not. However, when considering the issue of natural justice, I cannot be concerned with whether the result or the decision is "fair", or whether the Claimant was treated equitably by the Commission. I can address only a breach of natural justice by the General Division.

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

[14] There is no arguable case that the General Division failed to observe a principle of natural justice.

Issue 2: Did the General Division base its decision on an erroneous finding of fact?

[15] The Claimant also indicated that the General Division had made an important error regarding the facts, and referred to paragraph 11 of the General Division decision, under the

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

heading “Evidence,” where it states, “On December 7, 2016, the Commission noted in a letter to the Appellant that she received $80,445.00 on separation from her employment.”

[16] I am unsure what significance the Claimant attaches to paragraph 11 of the decision, but it is an accurate statement. The Commission’s letter of December 7, 2016, is found at GD3-18.

[17] In her application for leave to appeal, the Claimant reiterated her assertion that she had assumed she would qualify (presumably under the workforce reduction process) for Employment Insurance benefits at the time she accepted the Voluntary Retirement Incentive Plan (VRIP). She said that she had not known whether she would still qualify for her position in the future and that she was concerned that she would be laid off. She argues that she felt pressured to accept the VRIP.

[18] The General Division understood the Claimant’s argument that she had assumed she would be entitled to benefits under the workforce reduction process, and it accepted that she did not learn she did not qualify until after she received her Record of Employment. The General Division also understood that the Claimant might not have retired when she did if she had had a fuller understanding of how the VRIP and the workforce reduction process would operate in her case. However, the General Division still determined that the Claimant could have decided not to apply for early retirement under the VRIP or could have first confirmed with her employer that she would qualify under the workforce reduction process. The Claimant has not identified how that finding is an error.

[19] In *Karadeolian*,[2] the Federal Court found that “[…] the Tribunal must be wary of mechanistically applying the language of section 58 of the Act when it performs its gatekeeping function. It should not be trapped by the precise grounds for appeal advanced by a self-represented party…” Accordingly, I have reviewed the record for some other error. I was unable to discover any significant evidence that was overlooked or misunderstood, or any other obvious error.

[2] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

[20] The Claimant has not made an arguable case that the General Division based its decision on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the evidence before it.

Issue 3: Did the General Division err in law by failing to consider all the circumstances?

[21] Paragraph 29 (*c*) of the Act states that "just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances". A list of included circumstances follows, one of which is undue pressure by an employer on the claimant to leave their employment [s. 29 (*c*) (xiii)]. The Claimant has not asserted that the General Division erred in law by failing to consider all of the circumstances, but she has now framed her reason for leaving in terms of the pressure she felt to retire. Because "undue pressure" is one of the circumstances listed under s. 29 (*c*), I consider the Claimant to have raised a possible error of law.

[22] However, I do not find an arguable case that the General Division erred in law. The General Division may not have considered the time-limited VRIP offer or the uncertainty surrounding the restructuring and its impact on the Claimant's employment specifically in terms of the circumstance described in s. 29 (*c*) (xiii), but the Claimant or her representative had not framed the Claimant's concern to the General Division in terms of "pressure". In addition, it is clear from the decision that the General Division understood the circumstances on which the Claimant's perception of pressure was based, and that they were taken into account.

Acceptance of Other Claimants Under the Workforce Reduction Process

[23] Finally, the Claimant suggested that the General Division had erred in failing to address the fact that at least one co-worker who left under the same circumstances was approved for benefits (presumably under s. 51 of the Regulations, Work-force Reduction Process), while she was not.

[24] I note that the General Division acknowledged the Claimant's assertion about different treatment for co-workers at paragraph 14. The Claimant is correct that the General Division did not rely on what the Commission may or may not have approved based on circumstances that may or may not have been identical to the Claimant's. However, the question of the Claimant's

co-workers' entitlement was not before the General Division. Instead, it applied s. 51 of the Regulations to the Claimant's particular circumstances and found that she did not qualify. The particular circumstances and benefit entitlement of the Claimant's co-workers were not relevant to the General Division decision. Therefore, there is no arguable case that the General Division erred by failing to consider them.

[25] The Claimant does not have a reasonable chance of success on appeal.

CONCLUSION

[26] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	A. M., self-represented