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

Citation: *Y. C. v. Canada Employment Insurance Commission*, 2018 SST 432

Tribunal File Number: AD-17-929

BETWEEN:

Y. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: April 19, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) left her employment at the end of December 2016, after accepting an April 2016 offer of a voluntary retirement severance package. When she accepted the package, the Claimant was struggling with a number of health issues and was concerned that she could not manage her increased workload. She applied for Employment Insurance benefits but was denied on the basis that she had voluntarily left her employment without just cause. The Claimant sought reconsideration. In a letter dated April 7, 2017, the Respondent, the Canada Employment Insurance Commission, maintained its decision. The Claimant next appealed to the Tribunal's General Division, but it confirmed that she had had reasonable alternatives to leaving and dismissed her appeal. The Claimant now seeks leave to appeal to the Appeal Division.

[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 erred in law?

[6] Is there an arguable case that the General Division based its decision on an erroneous finding of fact that the Claimant had reasonable alternatives to leaving, and was this finding made in a perverse or capricious manner or without regard for the material before it?

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 would include the statutory provisions of the *Employment Insurance Act* (Act) and the *Employment Insurance 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 must decide.

[8] The appeal to the General Division was unsuccessful, and the application now comes before the Appeal Division. 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."

[9] 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.

[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]

[12] In her application for leave to appeal, the Claimant selected all three of the grounds of appeal in s. 58(1) of the DESD Act as her reasons for bringing the application and attached a letter in which she explained why she disagrees with the General Division's conclusion. The Appeal Division followed up with a letter dated January 9, 2018, setting out in more detail what is entailed in establishing each ground of appeal and requesting her to clarify her grounds of appeal. The Claimant discussed the letter with a Tribunal officer, on January 16, 2018, who emphasized that she needed to identify an error in accordance with one of the grounds of appeal. She provided a reply dated January 29, 2018, in which she expanded on her original concerns with the decision.

Natural justice

[13] The Claimant claimed in her response to the request for clarification that the General Division failed to adequately address certain issues, which she describes as "observations of natural justice" (AD1A-3).

[14] 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 a concern about the adequacy of notice of the hearing, pre-hearing disclosure of documents, the manner in which the hearing was conducted or 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.

[15] I do not find that there is an arguable case that the General Division failed to observe a principle of natural justice. I will consider the Claimant's argument that the General Division failed to adequately address her issues below in relation to the third ground of appeal and that the

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

General Division 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.

Error of law

[16] The Claimant has not identified any error of law, and no such error is apparent on the face of the record. There is no arguable case that the General Division erred in law.

Finding that the Claimant had reasonable alternatives

[17] The Claimant's arguments suggest that she believes she had no reasonable alternative to leaving. She submits that the General Division failed to consider her evidence, including the following:

- That the employer was looking for opportunities to downsize (or "offload") its staff;
- That she was at a late stage in her career and the retirement package provided a graceful exit;
- That her stress level was aggravating her health issues;
- That she needed a rest and to recover before seeking a job that was less stressful;
- That she is protective of her privacy and that her failure to inform her employer of her personal circumstances, including her health issues, was cultural;
- That she was fearful of disclosing medical information and taking a leave of absence since it would affect her position on return, and;
- That she had attempted to look for work before her health issues impacted her ability to do so.

[18] Section 30 of the Act operates to disqualify a claimant from receiving benefits if the claimant voluntarily left any employment without just cause. In this case, the fact that the Claimant left voluntarily was not disputed. I must determine whether there is an arguable case that the Claimant left without "just cause."

[19] Just cause is described in s. 29(c) of the Act. Subsection 29(c) 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." Therefore, the Claimant's circumstances that are relevant to the General Division's determination are those circumstances that would impact the availability of reasonable alternatives to quitting.

[20] I note that the General Division acknowledged and accepted that the Claimant had significant health issues, that she had endured an increase in workload and expectations over the several years preceding her leaving, that pressure and her workload were aggravating her medical conditions, and that the Claimant accepted the retirement package because she needed to recover and find a less stressful position. In consequence, the General Division accepted that the Claimant had experienced a significant change in her work duties (per s. 29(c)(*ix*) of the Act) and that her working conditions constituted a danger to her health or safety (per s. 29(c)(*iv*)).

[21] The General Division also accepted the Claimant's evidence that the employer was interested in having employees upgrade their education, but found that the employer had not required the Claimant to upgrade. It accepted evidence from the employer that the Claimant would likely have remained employed until 2020 if she had not taken the severance package. It found that the employer did not apply undue pressure on the Claimant to leave.

[22] It would appear that the General Division not only considered all of the evidence relating to the circumstances surrounding the Claimant's employment and her leaving that employment, but it also accepted almost all of the Claimant's evidence as true. In addition, the General Division's apprehension of much of that evidence is consistent with the Claimant's understanding. The Claimant acknowledged this, stating "the Tribunal understands the difficult situation I was facing and the hard decision that I have to make due to my continuous health issue" (AD1-4).

[23] In identifying the reasonable alternatives to leaving that were available to the Claimant, the General Division appears to have had regard to all the circumstances suggested by the evidence. As a result, it found that the Claimant could have spoken to her employer about her

difficulties to see if any changes could be made, or obtained a medical note to provide to her employer for the purpose of taking a medical leave or accessing accommodated work duties.

[24] The Claimant has not identified any possible error in this regard, except to say that the General Division failed to take into account her cultural tradition of maintaining a "distinctly private life" as justification for her not using other "options" (reasonable alternatives). She claims that her culture and traditions would have prevented her from discussing her health concerns with her employer.

[25] The General Division does not specifically account for any cultural predisposition to privacy of the Claimant's, but neither is there any obvious reason why it would. There was no evidence before the General Division to support the Claimant's present contention that she could not discuss her health issues because of her culture. To the contrary, the evidence suggested that the Claimant did raise her health concerns with her employer, at least to some degree. She mentioned that she had health problems to a Human Resources person (paragraph 20 of the decision) as well as to her manager (paragraph 22). Furthermore, in explaining to the General Division that she did not want her employer to know about her health issues, the Claimant identified other reasons. She said it was because "she was trying to solve the problem herself" and "she did not think it was necessary" (paragraph 25). She also said that she did not discuss her health out of concern that the employer might push her to leave or that she might be made to leave earlier (paragraphs 17 and 27[b]), and that she wanted to keep a good employment record (paragraph 27[b]).

[26] I cannot find an arguable case that the General Division erred in failing to take account of the Claimant's privacy concerns or her culture when identifying the Claimant's reasonable alternatives to leaving. The Claimant did not put evidence before the General Division on which it might have found these to be relevant circumstances.

[27] I have reviewed the record in order to determine whether any other evidence was overlooked or misunderstood by the General Division in accordance with the Federal Court's

direction.[2] However, I was unable to discover any significant evidence that was overlooked or misunderstood, or any other obvious error.

[28] I acknowledge that the Claimant disagrees with the conclusions and the result in this decision and that she would like me to reweigh the evidence and come to a different conclusion. However, when determining whether to grant leave, it is not my function to reassess the evidence or reweigh the factors that were considered so that I might reach a different conclusion.[3]

[29] I therefore find that the Claimant has not made 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 to the material before it.

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

CONCLUSION

[31] The Application is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	Y. C., self-represented

[2] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615; *Joseph v. Canada (Attorney General)*, 2017 FC 391.
[3] *Tracey v. Canada (Attorney General)*, 2015 FC 1300.