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

Citation: *M. L. v. Canada Employment Insurance Commission*, 2018 SST 492

Tribunal File Number: AD-18-120

BETWEEN:

**M. L.**

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: May 3, 2018

Canada

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] M. L. (Claimant), informed his employer that he was leaving to take a short-term position with another employer, and the employer accepted this as his resignation. When the other employment offer was withdrawn, the Claimant attempted to return to his original employer. However, the original employer did not wish to re-employ him. The Claimant applied for Employment Insurance benefits, but he was denied on the basis that he had voluntarily left his employment without just cause. The Respondent, the Canada Employment Insurance Commission (Commission), maintained its original decision following a reconsideration application. The Claimant's appeal to the General Division of the Social Security Tribunal was dismissed, and he now seeks leave to appeal to the Appeal Division.

[3] There is no reasonable chance of success on appeal. The Appeal Division has jurisdiction to hear appeals related only to the particular grounds of appeal identified in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act). The Claimant's leave application seeks to re-argue the facts before the General Division, but he has not identified any evidence that was ignored or misunderstood, nor has he identified how any of the General Division's findings could be considered perverse or capricious. Similarly, he has not claimed that the General Division made an error of law or jurisdiction or that the manner in which his appeal was heard gave rise to some specific error of natural justice. In other words, he has not raised an arguable case regarding any of the grounds of appeal.

### ISSUES

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice or exceed or refuse to exercise its jurisdiction?

[5] Is there an arguable case that the General Division decided that the Claimant voluntarily left his employment, based 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 Claimant left his employment without just cause, based on an erroneous finding of fact that it 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 apply 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 reach conclusions on the issues that it must decide, based on an application of the law to the facts.

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

[9] Subsection 58(1) of the 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 in its decision, an appeal of the General Division decision 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 it has a reasonable chance of success on one or more grounds of appeal, in order that I might grant leave and allow that appeal to go forward. A reasonable chance of success has been equated to an arguable case.[1]

**Natural justice and jurisdiction**

[12] One of the grounds of appeal selected by the Claimant on his application for leave is that the General Division failed to observe a principle of natural justice or exceeded or refused to exercise its jurisdiction. However, he did not explain how he felt the General Division had failed to observe a principle of natural justice or erred in jurisdiction.

[13] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision maker and the party's right to be heard and to know the case against them. The Claimant has not suggested that the General Division member was biased or that he had prejudged the matter. Nor has he 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, 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.

[14] Likewise, the Claimant did not raise an argument that the General Division exceeded or refused to exercise its jurisdiction.

[15] As a result, I find no arguable case that the General Division failed to observe a principle of natural justice or erred in jurisdiction.

**Determination on "voluntary leaving"**

[16] Section 30 of the Act operates to disqualify claimants from receiving benefits if they voluntarily leave their employment without just cause or if they lose their employment because

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

of misconduct. The Claimant argued to the General Division that he did not voluntarily leave his employment. His evidence was that he accepted a short-term job with another employer because work at his regular job was slow, but that he expected to return to his original job. In his application for leave, the Claimant stated that the General Division statement that he "quit [his regular employer] to work for [the short-term employer] is false."

[17] There was evidence before the General Division on which it could conclude that the Claimant voluntarily left his original job. The General Division considered that the Claimant had previously requested a leave of absence to work for the other employer and been denied (paragraph 27); that the employer had no shortage of work and was relying on him (paragraph 31); that he unilaterally notified his employer and that he had taken this other job effective almost immediately; that this was accepted as his resignation (paragraph 25); that he left because the other job offered better pay and benefits (paragraph 49); and that he challenged the employer's characterization of his leaving as a resignation only once it became clear the other job offer was withdrawn (paragraph 26).

[18] While the Claimant clearly disagrees with the General Division's findings and conclusions, he has not shown how those findings and conclusions might be perverse or capricious or made without regard for the material that was before the General Division. In other words, he has not identified any finding of the General Division that had no basis in evidence or that was based on improper or irrelevant considerations. Nor has he suggested that the General Division ignored or misunderstood any specific evidence when making its findings.

[19] The Claimant's submissions on this leave application are an attempt to re-argue the case that was before the General Division, which he supports with some additional assertions of fact. However, an appeal before the Appeal Division is not an appeal where a *de novo* hearing is held, i.e. where a party can resubmit its evidence and hope for a different decision.[2] Disagreement with the weight given to the evidence is not a ground of appeal with a reasonable chance of success.[3]

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[2] *Bergeron v. Canada (Attorney General)*, 2016 FC 220
[3] *Tracey v. Canada (Attorney General)*, 2015 FC 1300

[20] As far as any new evidence that may be interwoven with the Claimant's submissions is concerned, the introduction of new evidence cannot be considered as an independent ground of appeal.[4] The Appeal Division will consider new evidence only within narrow exceptions, such as when the evidence may assist to prove that there was a breach of natural justice in the General Division proceeding or when it is provided as general background material.[5] The Appeal Division cannot receive new evidence that could have been introduced at a prior hearing[6] or evidence that is not relevant to whether the General Division made an error based on the material that was before it. The Claimant has not satisfied me that any of his assertions of fact that were not before the General Division are material to one of the grounds of appeal described in s.58(1) of the DESD Act, or that they should otherwise be considered.

[21] I accept that the General Division's decision was based on the finding that the Claimant voluntarily left his employment, but I do not accept that the Claimant has made an arguable case that the General Division erred in reaching this finding. There is therefore no 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.

**Determination on "just cause"**

[22] Paragraph 29(*c*) of the Act states that just cause for leaving an employment, or taking leave from an employment, exists if a claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances. A non-exhaustive list of circumstances follows in ss. 29(*c*)(i) to (xiv).

[23] On review of the evidence and argument submitted to the General Division, the listed circumstance most relevant to the application is s. 29(*c*)(vi): reasonable assurance of another employment in the immediate future. The General Division did not accept that he had a reasonable assurance of employment on the basis that the job offer was for a period of three weeks and that employment was conditional on the Claimant passing a urine test (paragraph 54). The General Division also found that the Claimant had not exhausted reasonable alternatives to leaving, such as performing available maintenance work, remaining in his regular job until he

[4] *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100
[5] *Paradis v. Canada (Attorney General)*, 2016 FC 1282
[6] *Francella v. Canada (Attorney General)*, 2003 FCA 441

obtained a new (and presumably more permanent) job, or getting permission to take time off for the other work.

[24] At the General Division, the Claimant testified that there was a shortage of work at his original employer (paragraph 32) and that he took the temporary opportunity because it offered higher pay and better benefits (paragraph 49). However, there was also evidence before the General Division (paragraph 31) from the employer, to support that there was not a shortage of work. The General Division accepted that the Claimant could have continued working at his regular job and provided reasons for doing so (paragraphs 44–48). The Claimant has not presented an arguable case that the General Division erred in finding as it did.

[25] The General Division is the trier of fact. The Claimant may disagree with the General Division's weighing of the evidence or its inferences, as noted above, but I am not permitted to intervene unless the General Division has erred in one of the ways identified in s. 58(1) of the DESD Act.

[26] Following the direction of the Federal Court in cases such as *Karadeolian*,[7] I have reviewed the record for other evidence that may have been overlooked or misunderstood, but I was unable to discover an arguable case in relation to such an error.

[27] I find that the Claimant has failed to make 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.

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

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

**CONCLUSION**

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

Stephen Bergen
Member, Appeal Division

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| REPRESENTATIVE: | M. L., self-represented |