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

Citation: *P. D. v. Canada Employment Insurance Commission*, 2018 SST 494

Tribunal File Number: AD-18-97

BETWEEN:

P. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: May 3, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) left a job with one employer to take another better paying job. When he was subsequently laid off, he applied for and received Employment Insurance benefits. Sometime later, the Respondent, the Canada Employment Insurance Commission (Commission), investigated and determined that the Claimant knew, at the time he quit his original position, that his new position would be only temporary. As a result, the Commission determined that the Claimant did not have just cause for leaving his original employment and declared an overpayment. The Claimant asked the Commission to reconsider but the Commission maintained its decision. The Claimant's appeal to the Tribunal's General Division was dismissed and he now seeks leave to appeal.

[3] The Claimant does not have a reasonable chance of success. He has repeated many of the arguments he made to the General Division, but he has failed to show how the General Division failed to observe a principle of natural justice, made an error of 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 or erred in jurisdiction?

[5] Is there an arguable case that the General Division based its decision on an erroneous finding of fact by ignoring or misapprehending evidence related to the circumstances of the Claimant's voluntary leaving?

ANALYSIS

General Principles

[6] 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.

[7] 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."

[8] 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.

[9] 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.

[10] 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]

Natural justice and jurisdiction

[11] In his application for leave, the Claimant stated that the ground of appeal described in s. 58(1)(*a*) of the DESD Act was applicable. However, he did not explain how he felt the General Division had failed to observe a principle of natural justice or had erred in jurisdiction.

[12] 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 them. The Claimant has not suggested that the General Division member was biased or that she 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.

[13] No argument was raised that the General Division exceeded or refused to exercise its jurisdiction.

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

Circumstances of the Claimant's voluntary leaving

[15] The Claimant appealed to the General Division on the basis that he believed that leaving his job (the "first job") to take another job amounted to "just cause." In his application for leave to appeal, the Claimant set out a number of the same circumstances on which he had sought to justify his change of job in his appeal to the General Division. His leave application states that he quit because the first job was slow, paid less than his new job, and did not provide transportation to the job site. He also claimed that cedar dust at his first job was a health concern, and that the first job would not have been permanent.

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

[16] The General Division acknowledged the Claimant's evidence in relation to these various circumstances and it is apparent that it took the evidence into consideration. However, after weighing all of the evidence, including the Claimant's prior statements to the Commission (GD3-28), the General Division ultimately found that the Claimant had made a personal choice to accept a short-term, higher-paying job that he knew would result in his unemployment after two months (paragraph 46). The General Division did not accept that the Claimant expected to be laid off from his first job (paragraph 42).

[17] Relying on the Federal Court of Appeal's decision in *Langlois*,[2] the General Division found that a reasonable alternative to leaving to take a short-term position would have been to stay employed until he secured permanent employment. The General Division also considered that it would have been reasonable for the Claimant to have sought assistance from his doctor or his employer regarding his claimed health condition or other issues he may have been having at work.

[18] The Claimant has failed to identify an erroneous finding of fact on which the General Division decision was based and that could be said to be perverse or capricious, or made without regard for the evidence. 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.[3] Simply disagreeing with the General Division's findings does not disclose a valid ground under s. 58(1) of the DESD Act[4], and the re-weighing of evidence is not a ground of appeal with a reasonable chance of success.[5]

[19] To the extent that the Claimant's objection concerns the General Division's refusal to accept that the Claimant's circumstances are such as to constitute "just cause for voluntarily leaving his employment" within the meaning of the Act, I am unable to intervene. Such a determination involves the application of settled principles to the facts and is therefore a question

[2] *Canada (Attorney General) v. Langlois*, 2008 FCA 18
[3] *Bergeron v. Canada (Attorney General*), 2016 FC 220
[4] *Griffin v. Canada (Attorney General)*, 2016 FC 874
[5] *Tracey v. Canada (Attorney General)*, 2015 FC 1300

of mixed fact and law. The Federal Court of Appeal has recently confirmed that the Appeal Division has no jurisdiction to intervene in errors of mixed fact and law.[6]

[20] 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. However, I am unable to find an arguable case in relation to such an error.

[21] 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 for the material before it. The appeal has no reasonable chance of success.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	P. D., self-represented

[6] *Quadir v. Canada (Attorney General)*, 2018 FCA 21
[7] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615