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

Citation: *C. H. v. Canada Employment Insurance Commission*, 2018 SST 687

Tribunal File Number: AD-18-125

BETWEEN:

C. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 21, 2018

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, C. H. (Claimant), made an initial claim for sickness Employment Insurance (EI) benefits. A benefit period was established, and the Claimant was paid the maximum 15 weeks of sickness EI benefits. He then requested regular EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed the Claimant that they were unable to pay him regular EI benefits because he had voluntarily left his employment without just cause, within the meaning of the *Employment Insurance Act* (Act) and because he had failed to prove his availability pursuant to paragraph 18(1)(*a*) of the Act. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision. The Claimant appealed the Commission's decision to the General Division.

[3] The General Division found that the Claimant had quit his job and that he had reasonable alternatives to quitting his employment, which included speaking to his doctor before leaving his place of employment rather than three months later. He could also have used the time that he had accumulated for a period of leave. Consequently, the General Division concluded that he had failed to prove that he left his employment with just cause within the meaning of the Act. The General Division also concluded that the Claimant had not shown that he was making reasonable and customary efforts to obtain suitable employment. It found that a vague statement that he was available for work did not satisfy the requirements of the Act.

[4] The Claimant was granted leave to appeal to the Appeal Division. The Claimant submits that, in its decision, the General Division disregarded the medical evidence supporting his position that he had to be off work because of work-related stress, as well as his employer's refusal to grant him sick leave. He therefore had no choice but to leave

his employment. The Claimant further submits that he was ready, willing and able to work.

[5] The Tribunal must decide whether the General Division erred by ignoring the Claimant's medical evidence and whether it erred by not considering the evidence before it and by concluding that the Claimant was not available for work.

ISSUES

[6] Did the General Division err in law by ignoring the Claimant's evidence that he had to be off work because of work-related stress?

[7] Did the General Division err by not considering the evidence before it and by concluding that the Claimant was not available for work?

ANALYSIS

The Appeal Division's mandate

[8] The Federal Court of Appeal has determined that, when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the Appeal Division's mandate is conferred to it by sections 55 to 69 of that act.

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10] Therefore, unless 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, the Tribunal must dismiss the appeal.

Issue 1: Did the General Division err in law by ignoring the Claimant's evidence that he had to be off work because of work-related stress?

[11] This ground of appeal is without merits.

[12] The Claimant acknowledged having discussions with his employer about retirement but that his reason for leaving his work in July 2016 was work-related stress.[1]

[13] The Federal Court of Appeal has determined that, when a claimant alleges health reasons for leaving their employment, they must provide objective medical evidence that confirms not only the health issue but also that the claimant was obliged to leave work for those reasons. They must also demonstrate that they have attempted to reach an agreement with their employer to accommodate their health concerns and prove that they attempted to find alternative employment before leaving.[2]

[14] The Claimant did not satisfy any of these requirements to establish just cause for voluntarily leaving his employment.

[15] The Tribunal finds that the General Division gave no weight to the Claimant's medical evidence since it was requested three months after the voluntary leaving and it did not oblige the Claimant to leave his work for health reasons. The medical evidence states that he is incapable of working until January 2, 2017, but does not state that he has to leave his job. It is also clear from the evidence before the General Division that the Claimant did not seriously discuss his health concerns with his employer before deciding to quit and that he did not seek other work before quitting.

[16] The Tribunal finds that the General Division's decision on the issue of the Claimant's voluntarily leaving his employment is consistent with the evidence before it and that the decision complies with the law and decided cases. There is no reason for the Tribunal to intervene.

[17] This ground of appeal is dismissed.

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[1] GD3-15.
[2] *Her Majesty the Queen v. Dietrich*, FCA, A-640-93.

Issue 2: Did the General Division err by not considering the evidence before it and by concluding that the Claimant was not available for work?

[18] The General Division correctly determined the criteria established by the Federal Court of Appeal for determining the Claimant's availability.[3]

[19] The General Division found that the Claimant did not show a sincere desire to return to the labour market as soon as suitable employment was offered, did not make sufficient efforts to find suitable employment, and set personal conditions that unduly limited his chances of returning to the labour market.

[20] The evidence before the General Division shows that the Claimant was considering retirement at the time he quit his job in July 2016. He in fact retired in June 2017. According to the medical evidence, he was capable of working as of January 2, 2017. He did not, however, contact his former employer to get his job back, nor did he look for other work.[4] The employer stated that it could take him back and find other work for him.[5] The evidence also demonstrates that the Claimant limited his chances of returning to the labour market by setting personal conditions.[6]

[21] As correctly stated by the General Division, a mere statement of availability is not enough to discharge the Claimant's burden of proof.

[22] The Tribunal finds that the General Division's decision on the issue of availability is consistent with the evidence before it and that the decision complies with the law and the decided cases. There is no reason for the Tribunal to intervene.

[23] This ground of appeal is dismissed.

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[3] *Faucher*, A-56-96.
[4] GD3-15, GD3-17, GD3-24.
[5] GD3-16.
[6] GD3-24.

CONCLUSION

[24] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 14, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. H., Appellant Suzanne Prud'homme, Representative of the Respondent