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

Citation: *T. M. v. Canada Employment Insurance Commission*, 2018 SST 764

Tribunal File Number: AD-18-443

BETWEEN:

T. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: July 25, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. M., sought Employment Insurance (EI) benefits after voluntarily leaving her employment. She maintains that she had just cause for leaving and that she had no reasonable alternatives to leaving when she did.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the Applicant's request and disqualified her from benefits because it found that she had had reasonable alternatives to leaving her employment when she did.

[4] The General Division of the Social Security Tribunal of Canada found that the Applicant had voluntarily left her job. It went on to consider whether she had "just cause." It found that her wages had changed significantly and that her employer placed undue pressure on her to leave her job. Nevertheless, because there were reasonable alternatives available to her instead of leaving when she did, the General Division concluded that she did not have "just cause" for leaving. As a result, the disqualification imposed by the Commission was justified.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate her case. She argues that the alternatives to quitting that the General Division had found were not real options in her circumstances.

[6] I find that the appeal does not have a reasonable chance of success, because the Application simply repeats arguments she had made to the General Division and does not disclose any reviewable errors.

ISSUE

[7] Is there an argument that the General Division based its decision on serious errors in the findings of fact because it failed to take parts of the evidence in the appeal record into account?

ANALYSIS

[8] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.[1]

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?[2]

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error.[4] The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; 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.

[11] In the Application, the Applicant referred to the General Division as “the Respondent.” The Respondent is actually the Commission. For the sake of clarity, I note that this has no impact on the Application. I understood the arguments in the Application, notwithstanding.

[12] The Applicant submits that the General Division failed to take into account that she had tried to speak to her boss, without success; that she had tried to engage upper management in a previous issue, without success; that she did research on labour issues but found nothing helpful; that any other retail job would have had lower wages; that she wanted to avoid getting fired; and that attempting to take a medical leave would have meant no income.

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[1] *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3)
[2] *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22
[3] DESD Act at s. 58(2)
[4] DESD Act at s. 58(1)

Is there an argument that the General Division based its decision on serious errors in the findings of fact because it failed to take parts of the evidence in the appeal record into account?

[13] I find that there is no arguable case that the General Division failed to take into account parts of the evidence in the appeal record.

[14] The General Division took the evidence in the documentary record into account. It also considered the Applicant's testimony that was given during the teleconference hearing.

[15] The General Division was satisfied that the Commission met its burden of demonstrating that the Applicant had left her job voluntarily.[5] Therefore, the onus was on the Applicant to show that she had "just cause" for leaving. The General Division considered all of the Applicant's arguments on "just cause" and found that the employer had made significant, negative changes to her wages and treated her in a way that amounted to undue pressure for her to leave.[6]

[16] However, the analysis for "just cause" does not stop there. The determination of "just cause" is dependent on the findings of fact based on all the circumstances of the case. The legal test for "just cause" is as follows: on a balance of probabilities and having regard to all the circumstances, did the employee have no reasonable alternative to leaving the employment?[7]

[17] The General Division found that the Applicant had reasonable alternatives to leaving her employment, such as speaking to a higher authority above her manger, looking for other work, making enquiries about her employment rights, and seeking medical advice to either allow her to continue working or to support taking a leave for medical reasons.[8] As a result, the General Division determined that the Applicant did not meet the burden of proving "just cause" for voluntarily leaving her employment.

[18] The General Division considered the Applicant's position, including her reasons for not contacting her manager's supervisor or the office of the franchisor, consulting external labour agencies, seeing her doctor, or looking for other work.[9] It concluded that these reasons were not

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[5] General Division decision at para. 12
[6] *Ibid.* at paras. 13 to 24
[7] *Canada (Attorney General) v. White*, 2011 FCA 190
[8] General Division decision at paras. 28 to 32
[9] *Ibid*. at paras. 25 to 30

"just cause" under the *Employment Insurance Act*. It did not fail to take into account parts of the evidence in the appeal record in arriving at these conclusions. These findings of fact were not perverse or capricious manner or without regard for the material before it.

[19] In essence, the Applicant seeks to reargue her case based on similar arguments. She submits that she had wanted to keep her job and her income, although reduced, and that she did not plan on quitting or taking a leave of absence. She quit as a reaction to being "written up" and out of fear of being fired and having that on her work record. The General Division considered each of these arguments in the context of finding the facts based on "all the circumstances." A simple repetition of her arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[20] This ground of appeal has no reasonable chance of success.

[21] The Applicant now adds, in response to the General Division's decision, that the system is weighted in favour of an EI applicant who "knows how to play the system" and that seasonal workers collect EI but she has been refused.

[22] While I am sympathetic to the Applicant's frustration, these arguments do not disclose a ground of appeal that is based on a reviewable error.

[23] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[24] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	T. W., self-represented