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

Citation: *R. G. v. Canada Employment Insurance Commission and BC Hydro*, 2018 SST 772

Tribunal File Number: AD-18-209

BETWEEN:

R. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

BC Hydro

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: July 30, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. G., worked for BC Hydro (Employer) until he was dismissed on April 18, 2017. He applied for Employment Insurance benefits, but the Respondent, the Canada Employment Insurance Commission (Commission), initially and upon reconsideration, determined that there had been misconduct. It concluded that the Applicant was therefore disqualified from receiving Employment Insurance benefits.

[3] The Applicant appealed the Commission's reconsideration decision to the General Division, arguing that the Employer had failed to provide any evidence to justify the dismissal. The General Division found that there was no merit to these allegations. The General Division examined whether the Applicant was disqualified from receiving any benefits under s. 30 of the *Employment Insurance Act* for losing his employment because of his own misconduct. The General Division found that the Applicant had wilfully submitted an incorrectly coded timesheet (in which he coded work on days that he had been suspended without pay) and that he knew or reasonably ought to have known that this action could lead to his dismissal. The General Division determined that this constituted misconduct and therefore dismissed the appeal.

[4] The Applicant seeks leave to appeal the General Division's decision on the grounds that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, made an error in law, and made an important error regarding the facts. The Applicant argues that his employer had insufficient reasons to dismiss him. He also contends that the Employer altered one of the documents that the General Division relied upon when determining whether there was misconduct. I must decide whether the appeal has a reasonable chance of success.

[5] The application for leave to appeal is refused as the Applicant has not satisfied me that the appeal has a reasonable chance of success. For the most part, he is seeking a reassessment or

a rehearing on the issue of whether there was misconduct, which is not a ground of appeal under ss. 58(1) of the *Department of Employment and Social Development Act* (DESDA).

ISSUE

[6] Does the appeal have a reasonable chance of success on any of the grounds set out under ss. 58(1) of the DESDA?

ANALYSIS

[7] Subsection 58(1) of the DESDA sets out the grounds of appeal as being limited to the following:

(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 it decision, whether or not the error appears on the face of the record;

(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.

[8] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under ss. 58(1) of the DESDA and that the appeal has a reasonable chance of success. It is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General).*[1]

[9] The Applicant submits that the General Division erred under each ground. Despite a letter from the Social Security Tribunal requesting that he provide details to support his appeal, the Applicant has not particularized the reasons for the appeal as they might relate to the General Division. Indeed, he repeated many of the same allegations against his employer that he made in his appeal before the General Division. He provided additional background information

[1] *Joseph v. Canada (Attorney General)*, 2017 FC 391.

concerning his relationship with his employer. He also provided additional records and arguments to support his claim that he was dismissed without just cause. However, ss. 58(1) of the DESDA provides only limited grounds of appeal. The subsection does not allow for a reassessment of the evidence or a rehearing of the matter.

[10] The Applicant filed additional records, including what he describes as "Evidence #8"[2] and "Evidence #9."[3] The Social Security Tribunal provided the Applicant with an opportunity to apply to rescind or amend the General Division's decision, but the Applicant did not file such an application.

[11] New evidence generally is not permitted on an appeal, except in limited circumstances.[4] The Applicant has not presented any reasons for me to admit these additional records under any of the exceptions to the general rule. As the Federal Court has determined, generally, an appeal to the Appeal Division does not allow for any new evidence.

[12] I have reviewed the underlying record and do not see that the General Division either overlooked or misconstrued important evidence or arguments. For instance, the Applicant contends that the Employer altered one of the documents that the General Division relied upon when determining whether there was misconduct. The Applicant presented this same argument before the General Division. The General Division addressed this argument at paragraph 50 of its decision. It accepted that there were differences between the Employer's ten-day suspension letters, but it found that they were minor and that the substance of the letter was the same in both cases. The General Division simply assigned little weight to the alternate suspension letter. Not only did the General Division consider the Applicant's arguments on this point, but it considered them largely irrelevant.

[13] The Applicant's other primary argument before the General Division concerned the timesheets. The Employer dismissed the Applicant from his employment, in part, because he had incorrectly coded a timesheet for the period from March 31, 2017 to April 6, 2017, (coding for

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[2] Evidence #8, at AD1-152.
[3] Evidence #9, at AD-157.
[4] *Cvetkovski v. Canada (Attorney General)*, 2017 FC 193, at para. 31.

three days of work on days when he had been suspended without pay) and because the Applicant wrote comments on timesheets.[5]

[14] Much as he did before the General Division, the Applicant argues that it was impossible for him to have claimed time during an unpaid suspension, as he was required to charge 100% of his hours to work order numbers. He argues that it was impossible to claim time as one is unable to obtain approval for pay without a work order number. I presume that he is suggesting that the General Division erred by finding that he had in fact claimed time during an unpaid suspension.

[15] The General Division addressed this argument at paragraphs 70 and 71 of its decision. The General Division acknowledged the Applicant's argument that he would not have been paid for this time when he was on an unpaid suspension because he would not have obtained approval without a work order number. The General Division rejected the Applicant's arguments that he made notes on the timesheet for his own personal records and that he included these days because he was going to grieve the suspension. The General Division rejected the Applicant's explanation because it expected that he would have informed the Commission that he had used the timesheets for his personal records. Although the Applicant might not have been able to claim time without a work order number and without obtaining the appropriate approvals, the General Division found that the Applicant had nevertheless noted time for work during an unpaid suspension. It found that the Applicant used the timesheet in this manner to protest the suspension.

[16] While the Applicant disagrees with the General Division's findings on the issue regarding the timesheet, he does not otherwise explain how the General Division might have erred 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. There was time recorded on the timesheet, and the General Division was entitled to draw its own conclusions regarding the recorded time.

[5] Individual timesheet, at GD3-38.

CONCLUSION

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	R. G., self-represented