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

Citation: *H. Q. v. Canada Employment Insurance Commission*, 2018 SST 846

Tribunal File Number: AD-18-523

BETWEEN:

H. Q.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: August 28, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] In December 2011, the Respondent, the Canada Employment Insurance Commission, received an application for Employment Insurance regular benefits from the Applicant, H. Q. (Claimant). The application was approved and benefits were paid for 28 weeks from November 27, 2011 to June 9, 2012, but the Respondent subsequently determined that the Record of Employment that was used to establish the claim was fraudulent. The Respondent concluded that the Claimant had used false and misleading information to fraudulently secure Employment Insurance benefits.[1] The Respondent cancelled the Claimant's claim for Employment Insurance benefits and issued a notice of debt.[2] The Claimant asked the Respondent to reconsider its position because she had been out of the country when the application for benefits had been made. The Respondent maintained its position on reconsideration.[3] The Claimant appealed the reconsideration decision to the General Division on the basis that she could not have possibly made a claim for Employment Insurance benefits because she was out of the country, did not have her own bank account when the claim was made, and did not even know about Employment Insurance.

[3] The General Division rejected the Claimant's explanations and dismissed the Claimant's appeal. The Claimant now seeks leave to appeal the General Division's decision. She vigorously denies that she has ever made a claim for or received any Employment Insurance benefits and argues that she should not be held responsible for any overpayment. She maintains that her brother applied for benefits using her name, that he alone received benefits, and that this was all done without her knowledge or consent. She denies that her brother has ever transferred any of the monies to her. She argues that the General Division failed to observe a principle of natural

---

[1] Respondent's letter dated October 29, 2014, at GD3-94 to GD3-95.
[2] Respondent's letters dated August 26, 2015, at GD3-96 to GD3-97 and GD3-100.
[3] Reconsideration decision dated May 2, 2017, at GD3-279 to GD3-280.

justice and that it based its decision on an erroneous finding of fact that it made without regard for the material before it.

[4] I am refusing the Claimant's application because I am not satisfied that there is an arguable case on any of the grounds that she has raised or that the General Division erred in law, overlooked or misconstrued any of the evidence.

ISSUES

[5] The issues before me in this application are as follows:

> Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to consider the impact of its decision on the Claimant?
>
> Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact made without regard for the material before it when it decided that the Claimant's benefit period should be cancelled?

ANALYSIS

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (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 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.

[7] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. This 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).*[4]

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to consider the impact of its decision on the Claimant?

[8] The Claimant argues that the General Division failed to observe a principle of natural justice because its decision results in an unfair outcome; she submits that it is unfair to require her to repay money that she never received. She contends that her brother made a fraudulent claim for Employment Insurance benefits and that he alone collected the benefits. She is unwilling to report her brother to the police but will cooperate with any police investigation. She questioned why the Respondent does not arrange to interview her brother to verify her story. She notes that these proceedings have been very stressful and painful for her and her family.

[9] Natural justice is concerned with ensuring that claimants have a fair opportunity to present their case and that proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division, rather than the impact that a decision might have on a claimant. The Claimant's allegations do not address any issues of procedural fairness or of natural justice as they relate to the General Division. The Claimant has not pointed to or provided any evidence — nor do I see any evidence — to suggest that the General Division might have deprived her of an opportunity to fully and fairly present her case or that it exhibited any bias against her. As a result, I am not satisfied that the appeal has a reasonable chance of success on this ground.

Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact made without regard for the material before it when it decided that the Claimant's benefit period should be cancelled?

[10] The Claimant claims that the General Division based its decision on an erroneous finding of fact without regard for the material before it when it disregarded witnesses' testimony that the Claimant's brother fraudulently claimed Employment Insurance benefits in her name. At

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

paragraph 16, the General Division wrote that "The [Claimant] and her husband provided that it was her brother who filed the claim for benefits and deposited the money in his account." I note at the same time that the General Division wrote in the same paragraph that the Claimant had no knowledge who filed a claim on her behalf or where the money went. It is irrelevant that these two sentences are at odds with each other because the General Division then proceeded to dismiss both statements.

[11] The General Division did not make any findings regarding the extent of the brother's involvement, if any, in the Employment Insurance claim. Ultimately, the General Division determined that there was no substance to the allegation that the brother was involved because it found that the Claimant had filed the claim while she was overseas and that she used her brother's bank account to receive benefits.

[12] The General Division simply found that the testimony of both the Claimant and her spouse was not credible, so it was entitled to reject the Claimant's allegation that her brother was solely responsible for making a fraudulent claim.

[13] For instance, the Claimant and her spouse testified that they believed a meeting in October 2012 with Service Canada was for income tax purposes. The General Division rejected this evidence because the Respondent's letter set out that the meeting related to her Employment Insurance claim that had commenced on November 13, 2011.[5] The Respondent's letter also indicated that the Employment Insurance claim had been established using a Record of Employment issued by Silver Chef Restaurant Supplies Ltd. The letter also referred to the Claimant's employment with that company. The General Division found that it was not plausible that the Claimant and her spouse neglected to at least enquire about the contents of the letter, particularly given that it stated that she had been employed by a company of which she now denies having any knowledge.

[14] Given its credibility findings, I am not satisfied that the General Division based its decision on an erroneous finding without regard to the allegation that the brother made a fraudulent Employment Insurance claim in the Claimant's name.

---

[5] Respondent's letter dated October 11, 2012, at GD3-88 to GD3-89.

[15] The Claimant also claims that the General Division based its decision on an erroneous finding without regard for the material before it when it found that her spouse paid "$750,000"[6] in taxes. At paragraph 25, the General Division wrote that the husband indicated during the hearing that "he pays $700,000 dollars [*sic*] in taxes for his business." This fact was relevant because the General Division determined that the Claimant's spouse had to have some knowledge of a simple personal income tax return if he was operating a business and paying taxes. The General Division, in essence, concluded that the spouse therefore should have been aware that the Claimant's tax slip indicated that she had received Employment Insurance benefits.

[16] I have listened to the audio recording of the hearing before the General Division and have verified that indeed the Claimant's spouse gave this evidence, despite her assertions to the contrary.[7] He testified, "Believe it or not, in sales, I made to Revenue Canada over $700,000 last year." The General Division clearly understood this evidence to mean that the Claimant's spouse remitted taxes of over $700,000 to Canada Revenue Agency (CRA). This was a reasonable interpretation, given the reference to the CRA. Accordingly, I am not satisfied that the appeal has a reasonable chance of success on the basis of this argument.

[17] The Claimant is now trying to explain how her 2011 and 2012 income tax returns came to include the earnings from Employment Insurance. She explains that her spouse, who completed and filed the tax returns on her behalf, relied on the T4E slips because he did not really know much of her background.

[18] The Claimant argues that the General Division failed to consider that her spouse was unfamiliar with her financial situation and whether she had worked prior to their marriage in May 2012. Apparently, all he knew about the Claimant prior to their marriage was that she had gotten divorced overseas and was returning to Canada.

[19] It is clear that this evidence was irrelevant to the General Division's findings. The General Division noted that the Claimant's spouse denied knowing that the earnings were from Employment Insurance. However, it also found that he had to have been aware because the

---

[6] Application to the Appeal Division – Employment Insurance, at AD1-4.
[7] At approximately 44:22 of audio recording.

information he provided on the tax returns regarding her earnings came from T4E slips that identified the source of the earnings. The General Division also noted that the Claimant benefited from declaring earnings from Employment Insurance, because it resulted in a tax refund to which she likely was not entitled otherwise. However, she had not taken any steps to correct this error with CRA.

[20] The Claimant is essentially seeking a reassessment, but an appeal before the Appeal Division is not a reassessment or rehearing. As I have noted above, there are limited grounds of appeal under s. 58(1) of the DESDA. As Gleason J.A. wrote in *Garvey v. Canada (Attorney General)*,[8] mere disagreement with the application of settled principles to the facts of a case does not provide me with the basis to intervene. Such a disagreement does not constitute an error of law or an erroneous finding of fact made in a perverse or capricious manner or without regard to the evidence, as set out under s. 58(1) of the DEDSA.

[21] I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the evidence before it.

[22] Given these consideration, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	A. A., for the Applicant

[8] *Garvey v. Canada (Attorney General)*, 2018 FCA 118.