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

Citation: *K. J. v. Canada Employment Insurance Commission*, 2018 SST 842

Tribunal File Number: AD-18-507

BETWEEN:

K. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: August 27, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. J. (Claimant), worked as a sales clerk for a hardware store from September 11 to October 9, 2014. The employer completed a Record of Employment disclosing that the Claimant had quit her employment. The Claimant applied for Employment Insurance regular benefits. However, the Respondent, the Canada Employment Insurance Commission, determined in a letter dated December 13, 2016, that it could not pay her benefits starting October 5, 2014, because she had voluntarily left her employment on October 9, 2014, without just cause, within the meaning of the *Employment Insurance Act*, and that voluntarily leaving her job was not her only reasonable alternative.[1] The Respondent issued the same letter again on March 31, 2017.[2]

[3] The Claimant sought a reconsideration of the Respondent's March 31, 2017 decision. The Respondent maintained its decision on the issue of voluntary leave. (The Respondent also addressed other issues but they are not relevant to this application.) The Claimant appealed this reconsideration decision to the General Division, denying that she had quit and claiming that the employer had fired her. The General Division found that the Claimant had voluntarily left her employment. The Claimant now seeks leave to appeal the General Division's decision on the ground that it failed to observe a principle of natural justice by "neglecting" her witnesses, who she expected would have given evidence regarding her departure from her employment. I must now decide whether the appeal has a reasonable chance of success—that is, whether there is an arguable case that the General Division "neglected" the Claimant's witnesses.

[4] I am refusing leave to appeal because I am not satisfied that there is an arguable case that the General Division "neglected" the Claimant's witnesses.

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[1] Respondent's letter dated December 13, 2016, at GD3-49 to GD3-52.
[2] Respondent's letter dated March 31, 2017, at GD3-56 to GD3-59.

ISSUE

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice by "neglecting" witnesses?

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 one or all of 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.
>
> (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.*[3]

[8] The Claimant argues that the General Division failed to observe a principle of natural justice by "neglecting" witnesses. She claims that there were three witnesses who observed the employer terminate the Claimant from her employment in October 2014. She suggests that, had her witnesses been provided with the opportunity to testify, she would have readily established that she did not quit her employment.

[9] The hearing before the General Division was originally scheduled for a videoconference on April 11, 2018, but due to videoconferencing equipment issues, the hearing did not proceed

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

on that date and was rescheduled to June 13, 2018; furthermore, it was changed to a teleconference hearing. Ultimately, no one—including the Claimant—attended the teleconference hearing on June 13, 2018.

[10] The General Division member noted that on June 13, 2018, he had waited 15 minutes for the Claimant. He also noted that later that same day, the Social Security Tribunal twice attempted to contact the Claimant and that, on June 19, 2018, it left a message with the Claimant, instructing her to contact the Tribunal and to submit an adjournment request if she still intended on participating in a hearing. There is no record that the Claimant attempted to contact the Tribunal or that she ever sought an adjournment of the hearing on June 13, 2018.

[11] The General Division proceeded with the hearing in the Claimant's absence because it was satisfied that the Claimant had received notice of the rescheduled hearing and that there was no request for an adjournment.

[12] The Claimant does not contest this chronology, nor does she take issue with the fact that the hearing proceeded in her absence.

[13] This is the first occasion whereby the Claimant mentions any witnesses. Indeed, when she filed her Notice of Appeal with the General Division, she prepared a letter without mentioning the possibility of any witnesses. In fact, she suggested that she did not have any evidence to support her claim that she was fired from her employment. She wrote:

> Now because my employer is lying you want my entire claim paid back even though I called when I lost my job […] because people told me that this is what they do, the Manager fires you the owner pretends she knows nothing of it and then she can re-hire for the same position. I am not sure what else I should have done. I cannot provide proof ….

[14] This is not to suggest that claimants are required to provide a list of witnesses in advance of any hearings before the General Division, but, in this case, if the Claimant is going to argue that the General Division "neglected" her witnesses, she would have to establish that the General Division was aware that she had witnesses **and** that she intended to call on them to give evidence. I find no evidence that the Claimant had ever notified the Tribunal that she had any witnesses or that she intended to call any witnesses. I see no basis to conclude that the General

Division should have been aware of the possibility of any witnesses. For this reason, I am not convinced that the General Division failed to observe a principle of natural justice by "neglecting" any witnesses.

[15] Finally, I note that the Claimant provided contact information for her witnesses. This information comes too late because an appeal before the Appeal Division does not entail a reassessment or rehearing. As I have noted above, there are limited grounds of appeal under s. 58(1) of the DESDA.

[16] Additionally, 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 face of the record, or that it failed to properly account for any of the evidence before it.

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

CONCLUSION

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	K. J., self-represented