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

Citation: *E. K. v. Canada Employment Insurance Commission*, 2018 SST 851

Tribunal File Number: AD-18-486

BETWEEN:

E. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 31, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, E. K., sought and received Employment Insurance (EI) benefits after being laid off from his job as a school bus driver in June 2016. He moved to another city to lower his costs. He attended orientation training with the same employer in anticipation of starting work in September 2016 but did not return to work.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant voluntarily left his employment without just cause. The Applicant requested reconsideration. The Commission maintained its initial decision.

[4] The General Division found that: the Applicant voluntarily left his employment; there were reasonable alternatives to leaving his employment, so he did not have just cause; and he was properly disqualified from receiving EI benefits from September 6, 2016.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division's decision was unfair, "seems biased," and was based on important errors in the findings of facts.

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

ISSUES

[7] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[8] Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?

[9] Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

ANALYSIS

[10] 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]

[11] 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]

[12] 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.

[13] The Applicant submits that the General Division failed to take into account his personal circumstances and failed to act impartially. He argues that the General Division decision "seems biased" and that some of its findings of fact were "hypothetical" or did not take into account his specific circumstances.

Late Application and Extension of Time

[14] The Applicant was late in filing his Application with the Appeal Division.

---

[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] Ibid. at s. 58(1).

[15] The Applicant has not provided an explanation for the delay between the end of the appeal period, June 17, 2018, and August 3, 2018, the date on which the Application was completed.

[16] It appears that the Applicant attempted to file his Application on June 21, 2018, by email. However, there were pages missing from the documents and the Application was incomplete.

[17] In *Canada (Attorney General) v. Larkman*,[5] the Federal Court of Appeal held that when a decision-maker is determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[18] If the appeal has a reasonable chance of success, then it would serve the interests of justice to grant the extension of time.

[19] Therefore, I will consider whether the appeal has a reasonable chance of success.

Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?

[20] I find that there is no arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction.

[21] "Natural justice" refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them.

[22] The Application states that paragraph 31 of the General Division decision "seems biased" because the finding is "not definitive." The General Division found that "it was more likely than not that the [Applicant] told his employer that he forgot to let them know he was not returning to work" than that he had left a message with a fellow employee that he was quitting his job.

[23] This finding in no way shows bias on the part of the General Division member. The onus of proof is based "on the balance of probabilities," and the General Division found that the employer's version of events was more probable than the Applicant's. It is the General

[5] *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

Division's role to weigh the evidence and find facts. The use of the expression "more likely than not" is appropriate. No breach of natural justice occurred as a result.

[24] The Applicant pointed to paragraph 20, where the General Division stated "the Respondent verbally advised the Respondent," and argued that he was not advised and, therefore, the decision was "unfair." I note that this paragraph refers to the Respondent having advised the Applicant when he called to inquire about his request for reconsideration.[6] There was a typographical error in the sentence. The Applicant was advised and nothing unfair occurred.

[25] The Application did not explain in what way the General Division failed to observe a principle of natural justice, and there is no error related to natural justice that is apparent on the face of the file.

[26] The appeal does not have a reasonable chance of success based on this ground.

Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

[27] I find that there is no arguable case that the General Division made a serious error in its findings of fact.

[28] The General Division took the evidence in the documentary record into account. It also considered the testimony that the Applicant gave during the in-person hearing.

[29] The General Division considered the Applicant's financial circumstances[7] and the fact that he was laid off in June 2016.[8] It also conducted a full analysis of the issues of the Applicant's separation from work in June and in August/September 2016, the voluntary nature of this separation, and whether he had reasonable alternatives to leaving.

[30] The General Division considered the Applicant's circumstances and found that he had a number of reasonable alternatives to leaving his employment when he did.

---

[6] GD3-28 is a written record of the telephone call.
[7] General Division decision at paras. 12, 14, 17, 22, 23, 24, and 38–40.
[8] Ibid. at paras.1, 14, 17, and 23.

[31] In the Application, the Applicant argues that the reasonable alternatives found by the General Division were based on important errors because:

a) There was no evidence that a job existed in X to which he could have transferred;[9] this alternative was hypothetical;

b) The General Division agreed that he had "good reason" to move back home with his parents[10] and that the commute from X to X was not financially feasible; and

c) The Applicant did not place himself in a position of unemployment; the employer initially laid him off and caused financial hardship.

[32] The Applicant's submissions before the General Division, which included each of these arguments, were noted in the General Division decision.[11] In essence, the Applicant seeks to reargue his case based on arguments similar to those he made at the General Division. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[33] The Applicant also argued that the General Division's use of the expression "good reason" resulted in an important error because it did not define "good reason" as opposed to "good cause." In my view, this is a spurious argument. "Good reason" is easily understood via the ordinary dictionary meanings of the words and does not need a legal definition.

CONCLUSION

[34] I am satisfied that the appeal has no reasonable chance of success, so the Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	E. K., self-represented

[9] Ibid. paras. 20 and 39.
[10] Ibid. para. 40.
[11] Ibid. para. 25.