



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. I. v. Canada Employment Insurance Commission*, 2018 SST 903

Tribunal File Number: AD-18-494

BETWEEN:

A. I.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 17, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. I. (Claimant), had worked for his employer for many years in a position in which he travelled throughout the employer's service area to locate customers and promote the employer's products to contractors and builders. The employer eliminated this position and reassigned the Claimant to a sales desk job to clear product inventory from the company yard. The Claimant found the new arrangement to be unacceptable, and he quit.

[3] The Claimant applied for Employment Insurance benefits, but the Respondent, the Canada Employment Insurance Commission (Commission), refused his application on the basis that the Claimant had left his employment voluntarily without just cause. The Claimant disagreed and asked for a reconsideration, but the Commission maintained its original decision. As a result, the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal, and he is now seeking leave to appeal to the Appeal Division.

[4] The appeal has no reasonable chance of success. The Claimant has not made an arguable case that the General Division failed to observe a principle of natural justice or made a jurisdictional error. There is also no arguable case that the General Division decision was based on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the material before it.

ISSUES

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

[6] Is there an arguable case that 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?

ANALYSIS

General Principles

[7] The Appeal Division's task is more restricted than that of the General Division. The General Division is empowered to consider and weigh the evidence that is before it and to make findings of fact. The General Division then applies the law to these facts in order to reach conclusions on the substantive issues raised by the appeal.

[8] By way of contrast, the Appeal Division cannot intervene in a General Division decision unless it can find that the General Division has made one of the types of errors described by the grounds of appeal in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act) and set out below:

- 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.

[9] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion.

[10] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal in order to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.¹

¹ *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259

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

[11] Although the only ground of appeal selected by the Claimant on the leave to appeal application is the ground of appeal that describes an error related to natural justice or a jurisdictional error, the Claimant has not identified the nature of his natural justice objection, nor has he explained how the General Division may have made an error of jurisdiction. No such error is apparent on the face of the record.

[12] Natural justice refers to the fairness of the process itself and includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against him or her. The Claimant has not raised a concern with the adequacy of notice of the hearing, with the disclosure or exchange of documents, with the manner in which the hearing was conducted or his understanding of the process, or with any other action or procedure that could have affected his right to be heard or to answer the case. Nor has he suggested that the General Division member was biased or had prejudged the matter.

[13] The only issues arising from the reconsideration decision that were before the General Division were whether the Claimant left his job voluntarily and, if so, whether he left without just cause. The Claimant did not suggest that the General Division failed to consider these issues or considered issues that it should not have considered, nor did he identify any other jurisdictional error. There is no arguable case that the General Division made an error of jurisdiction.

[14] Therefore, there is no arguable case that the General Division erred under s. 58(1)(a) of the DESD Act by failing to observe a principle of natural justice, refusing to exercise its jurisdiction, or acting beyond its jurisdiction.

Is there an arguable case that 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?

[15] Although the only ground of appeal selected by the Claimant related to his assertion of a natural justice error, the Claimant's submissions focused on particular errors of fact. Furthermore, the Federal Court has directed the Appeal Division to look beyond the stated

grounds of appeal. In *Karadeolian v. Canada (Attorney General)*, the Court stated as follows:

“the Tribunal must be wary of mechanistically applying the language of section 58 of the [DESD] Act when it performs its gatekeeping function. It should not be trapped by the precise grounds for appeal advanced by a self-represented party like [the applicant in that case].”²

Accordingly, I have considered the Claimant’s concern that the General Division may have made certain mistakes of fact, and I have also reviewed the record for any other significant evidence that might have been ignored or overlooked and that may therefore, raise an arguable case. The specific factual errors that the Claimant has raised are discussed below.

[16] The General Division stated that the Claimant began working for the employer as a delivery driver (paragraph 13). As the Claimant notes in his leave to appeal application, he did not claim to have worked as a driver for the employer. In respect of the training he initially received, he testified that he accompanied a delivery driver (00:21:40)³ when he first started working for his employer. The driver explained his duties to him (00:22:55) and they did not include making deliveries. The General Division appears to have been mistaken on this point.

[17] The General Division stated that the Claimant was given an office, but the only evidence on this point is the employer’s acknowledgment that he was given a desk and a telephone. There is no evidence that he was given an office (GD3-25). The General Division was mistaken on this point as well.

[18] The General Division stated that the Claimant was given a product catalogue. Both the employer (GD3-17) and the Claimant (GD3-23) stated to the Commission that a product catalogue was left on his desk. The Claimant did not dispute this when a Commission representative mentioned it (GD3-23), but he did testify at the General Division hearing that there was no catalogue on his desk. Despite the contradiction in the Claimant’s evidence, the General Division had before it evidence on which it could conclude that the Claimant had been provided with a product catalogue.

[19] The General Division stated that the Claimant was told to go to the Operations Manager with questions. This is not found in the Claimant’s testimony but rather in the Operations

² *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

³ Time stamp of the audio recording of the General Division hearing

Manager's statement to the Commission that he told the Claimant to let him know if he needed anything (GD3-25). When the Commission asked the Claimant why he did not speak to his employer about his concerns about his job or knowledge, the Claimant's only response was to question why the employer did not come to him. There is no evidence that he was not told that he could bring his concerns to the Operations Manager.

[20] The General Division stated that the Claimant was familiar with "less than ten customers" on the customer list provided to him. In answer to paragraph 5 of the employer's Statement of Defense from a related action (00:57:50) and in discussing his original position, the Claimant testified that he had visited 93 builders on the 2016–2017 list and of those, seven had been existing customers (presumably before his visit). I was unable to locate any testimony or evidence that the customer list that he was given after he was reassigned to the desk job, contained only ten customers with whom he was familiar.

[21] While the General Division made errors in relation to particular details, as described above, the ground of appeal described under s. 58(1)(c) would require that the General Division **base its decision** on an erroneous finding of fact. The decision that the Claimant did not have just cause relies on a finding that the Claimant had no reasonable alternative to leaving, having regard to all the circumstances. In this case, the circumstances raised by the Claimant all appear to revolve around the significant change in work duties when he was reassigned. The General Division did not ignore or reject the Claimant's evidence that there had been a significant change in the Claimant's work duties. To the contrary, it accepted fully that the Claimant had experienced a significant change in work duties, agreeing that the new position was different in terms of degree of autonomy, organization of work, and the nature of the work to be performed.

[22] However, even taking the significance of this change into account, the General Division found that the Claimant could have discussed his concerns and questions with his employer or sought alternative employment before leaving, as reasonable alternatives. The General Division may have been mistaken in relation to the Claimant degree of familiarity with customers on the customer list, that the Claimant started working for the employer as a driver, and that he was given an office when he was reassigned, but none of these mistakes appear to be relevant to the existence of the reasonable alternatives identified by the General Division.

[23] I have fully reviewed the General Division record to determine whether other relevant evidence was ignored or misunderstood, but I have been unable to discover an instance that might raise an arguable case that the General Division's conclusion that the Claimant did not have just cause for leaving was based on an erroneous finding of fact.

[24] Therefore, there is no arguable case that 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 evidence before it, as would be required to establish an error under s. 58(1)(c) of the DESD Act.

[25] There is no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	A. I., self-represented
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