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

Citation: *D. K. v. Canada Employment Insurance Commission*, 2018 SST 959

Tribunal File Number: AD-18-600

BETWEEN:

D. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: September 28, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. K. (Claimant), worked as a landscaper for a property management company from March 2017 to July 2017. He applied for Employment Insurance regular benefits. On his application form, he disclosed that he quit this employment because of his relationship with the employer.[1] The Respondent, the Canada Employment Insurance Commission (Commission), denied his claim for benefits—initially and upon consideration—after determining that he had voluntarily left this employment without just cause and that voluntarily leaving his employment was not his only reasonable alternative.[2] The Claimant appealed the Commission's reconsideration decision to the General Division, claiming that his employer had harassed and threatened him, leaving him with high levels of stress.[3]

[3] The General Division held a teleconference hearing on July 11, 2018. It found that the Claimant did not prove just cause for voluntarily leaving his employment. The General Division found that that the Claimant was therefore disqualified from receiving Employment Insurance benefits. It dismissed the appeal.

[4] The Claimant now seeks leave to appeal, arguing that the General Division failed to observe a principle of natural justice.

[5] I must now decide whether the appeal has a reasonable chance of success—that is, whether there is an arguable case on the ground that the General Division failed to observe a principle of natural justice.

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[1] Application for Employment Insurance benefits, at GD3-6 to GD3-11.
[2] Commission's letters dated January 15, 2018, at GD3-30, and March 22, 2018, at GD3-36 to GD3-37.
[3] Notice of Appeal to the General Division, at GD2.

[6] I am refusing leave to appeal because I find that the appeal does not have a reasonable chance of success. The Claimant alleges that the General Division failed to observe a principle of natural justice, but there is no supporting evidence of this.

ISSUE

[7] Is there an arguable case that the General Division failed to observe a principle of natural justice?

ANALYSIS

[8] 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;
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> (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
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> (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] 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 committed by the General Division. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General).*[4]

[10] The Claimant submits that the General Division showed bias against him and that, as a result, it failed to conduct a fair hearing. In particular, he claims that the General Division was motivated to save money on behalf of Service Canada. This, apparently, was evidenced when the

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

member essentially stated that “we don’t just give out money” after he gave his opening submissions. He also claims that the member was rude and condescending towards him and that she manipulated him into saying that he would likely win, before denying his claim. Finally, he asserts that the member “rushed” the teleconference hearing.

[11] The hearing was scheduled for one hour[5] and, according to the audio recording, lasted for approximately 49 minutes. In opening remarks lasting more than 10 minutes, the General Division member explained her role. She stressed that she was independent of the Commission and that she had not been involved with the Claimant’s claim to date. She also explained that, although the Commission did not appear for the hearing, it had filed written arguments opposing his appeal and that it had a right to appeal her decision—whatever it would be—much like the Claimant. She explained that it was important for the Claimant to recognize that he did not automatically succeed with his appeal simply because the Commission failed to show for the hearing.

[12] The General Division member explained that her jurisdiction was limited to the disqualification issue. She also indicated that the Claimant should focus on addressing the legal test for just cause for voluntarily leaving his employment. She indicated that the Claimant had the onus of proving that he had just cause for voluntarily leaving his employment. She noted that s. 29 of the *Employment Insurance Act* listed some of the circumstances where just cause could exist. She noted that it was not an exhaustive list but the Claimant was required to demonstrate that, in all the circumstances, he had no reasonable alternative to leaving his employment when he did.

[13] The Claimant then gave opening submissions. He claimed that his former employer kept lying about what occurred. He noted that he had never faced harassment to the degree that he faced in this employment. He hoped that the General Division would be convinced that his employer had harassed him and that it would issue Employment Insurance benefits to him.

[14] At this point, the General Division member responded that, if the Claimant succeeded with his appeal, she would be unable to issue any Employment Insurance benefits and could only lift the disqualification. The member also explained that the Claimant would have to take a copy

[5] Notice of Hearing, dated May 18, 2018.

of the General Division's decision to his local Service Canada office to claim benefits. While the General Division erred in explaining the process to the Claimant,[6] this misstatement neither affected the outcome of the proceedings nor does it support the Claimant's allegation that the General Division stated, "we don't just give out money," or words to that effect.

[15] After the Claimant's opening submissions, the member asked, "ok, so that was your opening statement. Did you want to move now to your actual submissions?"[7] The Claimant responded: "Um yeah, I put down some evidence um that I have … um just like points and stuff and then I have like the screen shot that I attached. I should have attached more but um yeah um but I received a call …." The General Division member suggested that he start with "the points of evidence that [he] wanted to raise."[8] The Claimant then proceeded to give evidence.

[16] Despite the Claimant's assertions, at no point did the General Division state, "we don't just give out money," or words to that effect—either after the Claimant's opening submissions or, for that matter, at any point during the hearing.

[17] Further, I could see no evidence where the General Division showed any preference or bias in favour of the Commission or that it was motivated to save money for Service Canada, or any evidence that the outcome was predetermined. Indeed, in her closing remarks, the General Division member advised that she would be unable to render a decision "this instance" because "obviously [she would] need to review [her] notes and the file and consider everything."[9]

[18] The Claimant alleges that the General Division "rushed" him to give evidence and make submissions, but, after having listened to the audio recording, it is apparent that the General Division member provided the Claimant with several opportunities to give evidence. For instance, after the Claimant testified, the General Division member asked the Claimant, "Do you

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[6] A claimant who succeeds in overturning a reconsideration decision is not required to return to Service Canada because the Commission will implement the General Division decision, assuming that it does not seek to appeal it. A claimant is not required to "ask for benefits" again, but there may be outstanding issues (e.g. availability) that could preclude the payment of Employment Insurance benefits.
[7] At 12:55 to 13:03 of audio recording of the hearing.
[8] At 13:23 of audio recording of the hearing.
[9] At approximately 47:53 of audio recording of the hearing.

have anything else?"[10]—to which the Claimant responded, "No, but I can answer any questions you have though."

[19] Another example that suggests that the General Division did not rush the Claimant relates to his claim that he felt unsafe at work. During the hearing, the General Division member noted that the Claimant had stated in his materials that he felt unsafe. The member asked the Claimant, "Did you want to address that at all?"[11] The Claimant declined to address the issue because he thought that he had "said enough about the safety and whatnot."[12] The member advised the Claimant that, in fact, he had not discussed the safety issue so asked him again whether he wanted to address the issue. He testified, "I guess I'm alright,"[13] so the member tried to confirm that he did not wish to address the issue at all. The member referred the Claimant to the page reference in the hearing file, in an effort to determine whether she should consider workplace safety as part of the Claimant's argument that he had just cause for leaving his employment.

[20] Had the General Division been in a rush to finish the proceedings as early as possible, it is highly doubtful that the General Division would have pursued many, if any, questions for the Claimant nor provided him with several opportunities to address particular issues.

[21] The Claimant claims that the General Division member was rude and condescending and manipulated him into saying that he would likely win. I see no evidence from the audio recording that this occurred.

[22] I am not satisfied that the General Division failed to observe a principle of natural justice in the manner that the Claimant alleges.

[23] Finally, I have reviewed the underlying record and do not see any indication that the General Division either erred in law, whether or not the error appears on the face of the record, or that it overlooked or misconstrued any key evidence. The General Division set out the applicable provisions of the *Employment Insurance Act* that govern voluntary leave and just cause for leave, as well as relevant case law. The General Division also addressed the Claimant's

[10] At 35:37 of audio recording of the hearing.
[11] At 41:05 of audio recording of the hearing.
[12] At 41:13 of audio recording of the hearing.
[13] At 41:34 of audio recording of the hearing.

evidence explaining the circumstances that compelled him to leave his employment. Ultimately, the General Division determined that the Claimant's circumstances and his relationship with his former employer did not constitute harassment. The General Division also determined that the Claimant's level of stress and the workplace situation had not reached a level that meant that the Claimant had no reasonable alternative but to leave his employment. Simply disagreeing with the application of settled law to the facts of the case does not afford the basis for intervening in the General Division decision under s. 58(1) of the DESDA.

CONCLUSION

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

Janet Lew
Member, Appeal Division

APPEARANCE:	D. K., self-represented