



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v. Canada Employment Insurance Commission*, 2018 SST 948

Tribunal File Number: AD-18-575

BETWEEN:

R. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 25, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant, R. B. (Claimant), had not reported that she had worked or that she had earnings during a period in which she collected Employment Insurance benefits. The Claimant sought a reconsideration of the amount that she was required to repay, but the Commission maintained its decision. The Claimant appealed to the General Division of the Social Security Tribunal. Her appeal was dismissed with a modification that increased the repayment amount by adjusting the earnings in the weeks of January 24, 2016, and January 31, 2016. The Claimant now seeks leave to appeal to the Appeal Division.

[3] There is no reasonable chance of success on appeal. The Claimant has not identified how the General Division failed to observe a principle of natural justice, nor has she identified any particular error of fact that it may have made. I have been unable to discover any significant evidence that the General Division ignored or misunderstood.

ISSUES

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

[5] 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

[6] 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 to reach conclusions on the substantive issues raised by the appeal.

[7] By way of contrast, the Appeal Division cannot intervene in a General Division decision unless it finds 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.

[8] 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.

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

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

[10] Natural justice refers to fairness of process 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 the notice of the General Division hearing, with the pre-hearing exchange or disclosure of documents, with the manner in which the General Division hearing was conducted or her understanding of the process, or with any other action or procedure that could have affected her right to be heard or to answer the case. Nor has she suggested that the General Division member was biased or that the

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

member had prejudged the matter. 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.

[11] There were only two issues arising from the reconsideration decision that were before the General Division. The first issue was the extent of her earnings in the weeks of January 17, 2016, January 24, 2016, January 31, 2016, and February 7, 2016, while she was collecting Employment Insurance benefits. The second was whether she was overpaid benefits as a result of earnings in these weeks.

[12] 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 she identify any other jurisdictional error. Therefore, there is no arguable case that the General Division erred under s. 58(1)(a) of the DESD Act by refusing to exercise its jurisdiction or by 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?

[13] Although the only ground of appeal selected by the Claimant involves her assertion of a natural justice error, the Claimant is clearly taking issue with the General Division's findings 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 states as follows: "[T]he 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

[14] Accordingly, I have reviewed the record for any other significant evidence that might have been ignored or overlooked and that may, therefore, raise an arguable case.

[15] The Claimant maintains that she did not work many hours for her employer and that the employer has represented that he paid her more than he actually did. The Claimant's concern with the General Division decision is that the General Division did not accept her evidence of earnings over that of her employer.

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

[16] The General Division appears to have considered the evidence on the appeal record, including all the evidence provided by the Claimant. It detailed its reasons for questioning the applicability or credibility of the Claimant's evidence and analyzed the relative plausibility of the Claimant's evidence versus the employer-provided payroll information, Record of Employment, and the clarification evidence provided by the employer (at GD7-2). In the end, the General Division preferred the earnings figures that the employer provided. The General Division's reasons for doing so are extensively detailed in the decision.

[17] On review of the record, I was unable to discover significant evidence that the General Division overlooked or misunderstood. I appreciate that the Claimant disagrees with the manner in which the General Division weighed and analyzed the evidence and with its conclusion, but simply disagreeing with the findings does not establish a ground of appeal under s. 58(1) of the DESD Act,³ nor does a request to reweigh the evidence establish a ground of appeal that has a reasonable chance of success.⁴

[18] The Claimant has not convinced me that there is an arguable case that the General Division erred in the manner described in s. 58(1)(c) of the DESD Act. There is no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	R. B., self-represented
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³ *Griffin v. Canada (Attorney General)*, 2016 FC 874

⁴ *Tracey v. Canada (Attorney General)*, 2015 FC 1300