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

Citation: *X v. Canada Employment Insurance Commission and S. M.*, 2018 SST 984

Tribunal File Number: AD-18-529

BETWEEN:

**X**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**S. M.**

Added Party

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 11, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, X, was the employer of the Added Party, S. M.. The Added Party applied for Employment Insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission, first approved the Added Party's application, finding that she did not lose her employment due to misconduct. It later refused her claim for EI benefits because it found that she lost her employment as a result of her own misconduct. This finding was later changed.

[4] Before the General Division, the Respondent took the position that the Added Party voluntarily left her employment without just cause. The disqualification was maintained because the Respondent determined that she had a reasonable alternative to leaving her employment when she did.

[5] The General Division of the Social Security Tribunal of Canada found that the Added Party voluntarily left her employment because of antagonism with her employer where she was not primarily responsible for the antagonism and because of undue pressure on her to leave.

[6] The Applicant filed an application with the Appeal Division and submitted that the General Division did not properly evaluate the case. It maintains that the Added Party lied and the General Division made findings that were unsupported by the evidence.

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

## ISSUES

[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 decision is based on serious errors in the findings of fact because the General Division failed to take into account parts of the evidence in the appeal record?

## ANALYSIS

[10] An applicant must seek leave 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 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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 erred in its findings included in paragraphs 3, 9, 16, 18 to 22, and 24 to 28 of its decision. It argues that General Division failed to refer to evidence to support its decision, relied on “lies” in the testimony of the Added Party, and ignored important facts and evidence.

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[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] DESD Act, at s 58(1).

[14] The other parties were invited to make written submissions on whether leave to appeal should be granted or refused. The Added Party filed submissions, but the Respondent did not.

**Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?**

[15] 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.

[16] "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. It is settled law that an appellant has the right to expect a fair hearing with a full opportunity to present his or her case before an impartial decision-maker.[5]

[17] Here, it is unclear what the Applicant alleges was a breach of natural justice. The application alleges that the General Division "stood on the employee's standpoint before making its decision" and failed to find that the Applicant had lied. It appears that the Applicant is inferring that the General Division was prejudiced or biased.

[18] An allegation of prejudice or bias of a tribunal is a serious allegation. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of the applicant. It must be supported by material evidence demonstrating conduct that "derogates from the standard."[6]

[19] The application did not explain how the General Division failed to observe a principle of natural justice, and it was not supported by material evidence about the General Division member's conduct of the proceedings. There is no error related to natural justice that is apparent on the face of the file, either.

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

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[5] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 21–22.
[6] *Arthur v Canada (A.G.)*, 2001 FCA 223.

**Issue 2: Is there an arguable case that the General Division decision is based on serious errors in the findings of fact because it failed to take into account parts of the evidence in the appeal record?**

[21] The General Division did not base its decision on serious errors in the findings of fact.

[22] The General Division took into account the evidence in the appeal record, which included documentary evidence and the witnesses' testimony at the hearing. The General Division was satisfied that the Added Party had just cause for voluntarily leaving her employment.

[23] The Applicant argues that the General Division did not support its decision, did not quote the evidence, ignored evidence provided by the employer and accepted "lies" in the testimony of the Added Party.

[24] The specific findings that the Applicant submits are incorrect include:

a) The Added Party was employed as a "commissioned flooring salesperson" (paragraph 3);

b) The Added Party had just cause to voluntarily leave her employment when her work environment deteriorated and became increasingly toxic and hostile (paragraphs 16, 20, 27) and the employer was primarily responsible for the antagonism in question (paragraph 18, 19, 28);

c) The reference to section 29(c)(xii) of the *Employment Insurance Act* (EI Act) (paragraph 18);

d) The Added Party had no reasonable alternative to leaving her employment, when there were multiple reasonable alternatives (paragraphs 26 to 27).

[25] The General Division considered the Applicant's arguments, its testimony and the evidence on file. Its decision specifically referred to email exchanges between the parties, voice recordings made by the employer, and the testimony of the parties and one other witness at the hearing. It need not refer to every piece of evidence in the appeal record or provide quotes from the evidence.

[26] For an erroneous finding of fact to be considered reviewable by the Appeal Division:

a) The finding must be erroneous;

b) The General Division must have based its decision on that erroneous finding of fact; and

c) That erroneous finding of fact must have been made in a perverse or capricious manner or without regard for the material before it.

[27] The General Division did not base its decision on referring to the Added Party's position as a "commissioned flooring salesperson."

[28] It did not base its decision on section 29(c)(xii) of the EI Act, either. That was a typographical error. The General Division stated that there was undue pressure by the employer on the Added Party to leave her employment, which is the wording of section 29(c)(xiii) of the EI Act.

[29] As for the findings that the Added Party had just cause to voluntarily leave her employment when her work environment deteriorated and became increasingly toxic and hostile and that the employer was primarily responsible for antagonism, the General Division made these findings after reviewing and weighing the evidence (documentary and oral), in light of the legislative provisions and the jurisprudence. It did not make these findings in a perverse or capricious manner or without regard for the material before it.

[30] This also applies to the finding that there were no reasonable alternatives to the Added Party leaving her employment when she did.

[31] The application repeats many of the arguments that the Applicant made at the General Division. A simple repetition of arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[32] With each of these arguments, the Applicant is asking the Appeal Division to reassess the evidence and make findings that differ from the General Division's findings.

[33] The General Division had the benefit of hearing the witnesses' testimony and weighing it along with all the other evidence in the record. It is authorized to assess credibility and assign the weight to be given to evidence. It is not the role of the Appeal Division to rehear or reweigh the evidence.

[34] I have read and considered the General Division decision and the documentary record. My review does not indicate that the General Division overlooked or misconstrued important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it erred in law in coming to its decision.

[35] I am satisfied that the appeal has no reasonable chance of success.

**CONCLUSION**

[36] The application is refused.

Shu-Tai Cheng
Member, Appeal Division

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| REPRESENTATIVES: | X represented by Lin Dong<br><br>S. M., self-represented |