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

Citation: *J. R. v. Canada Employment Insurance Commission*, 2018 SST 1020

Tribunal File Number: AD-18-596

BETWEEN:

**J. R.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: October 17, 2018

Canada

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, J. R. (Claimant), was employed as a mobile steam operator, but he left his job because of concerns about his health, safety, and assigned duties. When he applied for Employment Insurance benefits, the Respondent, the Canada Employment Insurance Commission (Commission), denied his claim, finding that he voluntarily left his employment without just cause. After the Commission maintained this decision on reconsideration, the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed the appeal, and the Claimant now seeks leave to appeal to the Appeal Division.

[3] The appeal has no reasonable chance of success. The Claimant did not explain how the General Division may have failed to observe a principle of natural justice, and he has not identified any 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 or made an error of jurisdiction?

[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 evidence 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 in order 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 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.

[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] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case[1].

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

[10] In his application for leave to appeal, the Claimant indicated that the General Division had failed to observe a principle of natural justice or acted beyond or refused to exercise its jurisdiction. He did not otherwise elaborate on the basis for asserting this ground of appeal.

[11] Natural justice is not concerned with whether the decision or result is fair. It refers to the fairness of the decision-making process. Natural justice includes procedural protections such as the right to an unbiased decision-maker and the right of parties to be heard and to know the case against them. The Claimant has not raised a concern about the adequacy of notice of the hearing, the pre-hearing disclosure of documents, the manner in which the hearing was conducted, his understanding

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

of the process, or 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. There is no arguable case that the General Division failed to observe a principle of natural justice.

[12] Similarly, the Claimant has not suggested in what manner the General Division may have exceeded its jurisdiction or failed to exercise its jurisdiction, so he has not raised an arguable case that the General Division made an error of jurisdiction.

**Issue 2: 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 to the evidence before it?**

[13] The General Division may be found to have erred under s.58(1)(c) of the DESD Act if it makes a decision that is not based on the evidence that was before it; if its findings are based on a misunderstanding of the evidence, or if it ignores relevant evidence. In addition, the General Division may be in error if its findings are otherwise perverse or capricious.

[14] In this case, the General Division was required to decide whether the Claimant had left his employment voluntarily and, if so, whether he had just cause for leaving. According to s. 29(c) of the *Employment Insurance Act* (EI Act), just cause for voluntarily leaving exists if a claimant has no reasonable alternative to leaving, having regard for all the circumstances. Paragraph 29(*c*) lists 14 circumstances for consideration at s. 29(c)(i) to (xiv), but this is not an exhaustive list of relevant circumstances.

[15] The Claimant did not argue at the General Division hearing that he did not leave his job voluntarily, and there was no evidence to suggest that he did not leave voluntarily. Therefore, there is no arguable case that the General Division erred in finding that he left his job voluntarily.

[16] The Claimant's argument at the General Division was that his employment circumstances were such that he had just cause for leaving. He argued that he was concerned that the employer required him to drive even when he had not had sufficient sleep and asked him to avoid weigh scales (which suggested to him that his truck was overweight). He argued that he was asked to leave his own vehicle in jeopardy of an uninsured accident. He also argued that he wasn't getting as many, or as regular, hours as he had been promised and that he was asked to perform more

menial job duties than were appropriate to his position and qualifications. Finally, he argued that all of these work conditions contributed to a deterioration in his mental health. In his leave to appeal application, the Claimant repeated the circumstances that he had argued before the General Division in support of his position that he had just cause for leaving.

[17] As noted above, the General Division was required to consider the Claimant's circumstances for the purpose of determining whether the Claimant had reasonable alternatives to leaving. Under s. 29(c) of the EI Act, the General Division could find just cause only if the Claimant had no reasonable alternative to leaving. Therefore, I must decide whether the General Division's finding that the Claimant had reasonable alternatives to leaving was a finding that ignored or misunderstood any evidence or whether it was otherwise perverse or capricious.

[18] The General Division decision describes and addresses the facts asserted by the Claimant to support the existence and impact of various circumstances, and it appears to basically accept the truthfulness—if not always the sufficiency—of the Claimant's evidence. However, the General Division still determined that the Claimant could have discussed his concerns with his employer before leaving. This was said to be a reasonable alternative to address his concern about the employer's custodial care of his personal truck, his various safety concerns, the nature of his job assignments and the limited hours, and the effect of the job demands on his health.

[19] The Claimant did not dispute that he did not discuss his health concerns with his employer, and he confirmed in his application for leave to appeal that he left the job without discussing his other concerns with his employer. The Claimant agreed that he did not seek medical advice, which might have confirmed a diagnosis or related his health issues to his work, and he did not seek a medical leave.[2]

[20] The Claimant did not point to any evidence that had been before the General Division that the General Division ignored or misunderstood. Likewise, he did not explain how the General Division's finding that the Claimant had the reasonable alternative of discussing his concerns with his employer could be considered "perverse or capricious".

[2] These points are found in the leave to appeal application at AD1-3

[21] I note that the Claimant believed that there would have been little point in discussing his concerns with his employer, because his boss was "the one asking all of this of [him] and being a new hire, [he] thought [he] would not get any work if he was constantly complaining"(AD1-3). However, this does not raise an arguable case that it was perverse or capricious for the General Division to find that he could have had such a discussion before quitting. Discussing his concerns with his boss and taking the risk of losing out on some work would still have been preferable to quitting outright. As the Federal Court of Appeal noted in *Canada (Attorney General) v. Langlois,*[3] "[a]part from certain exceptions, it is the responsibility of insured persons, in exchange for their participation in the scheme, not to provoke [the risk of unemployment] or, *a fortiori*, transform what was only a risk of unemployment into a certainty".

[22] Following the lead of the courts in cases such as *Karadeolian v. Canada (Attorney General),*[4] I have reviewed the record for an arguable case that the General Division made some other factual error. However, I have not discovered any evidentiary oversight or apparent misunderstanding.

[23] 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 to the material before it under s. 58(1)(c) of the DESD Act.

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

[3] *Canada (Attorney General) v. Langlois*, 2008 FCA 18
[4] *Karadeolian v. Canada (Attorney General)* 2016 FC 615

**CONCLUSION**

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

Stephen Bergen
Member, Appeal Division

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| REPRESENTATIVES: | D. R., for the Applicant |