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

Citation: *A. A. v. Canada Employment Insurance Commission*, 2018 SST 1100

Tribunal File Number: AD-18-543

BETWEEN:

A. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: November 6, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. A.(Claimant), collected Employment Insurance benefits until August 28, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), later determined that she had returned to work on August 22, 2016, but that she had failed to declare earnings from her employment. The Commission reallocated her earnings and declared an overpayment, and imposed a penalty for knowingly making a false representation. The Claimant sought reconsideration with the result that the penalty was removed, but the Commission maintained the overpayment of $537.00. The Claimant's appeal to the General Division of the Social Security Tribunal concerning the overpayment was dismissed, and she now seeks leave to appeal.

[3] The appeal has no reasonable chance of success. The Claimant did not identify any failure of the General Division to observe a principle of natural justice or any error of jurisdiction. Nor did she describe any other error of law or point to any evidence that was overlooked or misunderstood.

ISSUE

[4] 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

[5] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make

findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the substantive issues raised by the appeal.

[6] However, the Appeal Division may only intervene in a decision of the General Division, if 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 DESD Act.

[7] The only grounds of appeal are described 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.

[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 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]

Issue: 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?

[10] On her application for leave to appeal, the Claimant did not select any of the identified grounds of appeal. On September 7, 2018, the Appeal Division sent a letter to the Claimant requesting that she identify her ground or grounds of appeal and asking that she explain how the General Division erred.

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

[11] In her September 23, 2018, response, the Claimant reiterated her position that the employer had made a mistake on her Record of Employment (ROE) and that she did not work the week of August 21, 2016. However, the Claimant failed to point to any error under any of the grounds of appeal set out in s. 58(1) of the DESD Act.

[12] Following the direction of the Federal Court in cases such as *Karadeolian v Canada (Attorney General),*[2] I have reviewed the record for other evidence that may have been overlooked or misunderstood.

[13] The General Division based its decision on the evidence that was before it. That evidence included the ROE that the Claimant now says was in error, but it also included other evidence: the Claimant's pay stub for September 2, 2016, recorded that she had gross earnings of $2,520.00; the employer's email to his payroll department stated that the Claimant had worked 12 days from August 22 to September 2, 2016; and the Claimant's time sheet indicated that she had worked in that same period.

[14] The General Division also acknowledged the Claimant's statements that she did not start work for the employer because she was out of town looking for work on August 22, 2016, but the General Division found certain inconsistencies in her evidence. When the General Division weighed all of the evidence, it reached the conclusion that the Claimant had worked in the week of August 21, 2016.

[15] An appeal before the Appeal Division is not an appeal where a *de novo* hearing is held, i.e. where a party can resubmit its evidence and hope for a different decision.[3] Similarly, the Claimant has no reasonable chance of success in arguing that the General Division should have weighed the evidence differently to reach a different conclusion.[4] I understand that the Claimant disagrees with the General Division's finding that she worked in the week of August 21, 2016, but simply disagreeing with the findings does not disclose a valid ground under s 58(1) of the DESD Act.[5]

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[2] *Karadeolian v Canada (Attorney General)*, 2016 FC 615
[3] *Bergeron v Canada (Attorney General*), 2016 FC 220
[4] *Tracey v Canada (Attorney General)*, 2015 FC 1300
[5] *Griffin v Canada (Attorney General)*, 2016 FC 874

[16] The Claimant has not identified any manner in which the General Division mistook or mischaracterized the evidence, nor has she highlighted any evidence that it ignored. The evidence on the Commission file is accurately described by the General Division, and I have been unable to discover any factual error on the face of the record.

[17] I find that the Claimant has failed to make 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 under s. 58(1)(c) of the DESD Act, that the General Division erred under the other grounds of appeal.

[18] The appeal has no reasonable chance of success.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	A. A., self-represented