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

Citation: *P. R. and X v. Canada Employment Insurance Commission*, 2018 SST 1193

Tribunal File Number: AD-18-711

BETWEEN:

P. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: November 21, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, P. R. (Claimant), left her employment because she felt she had neither the direction nor the authority to deal with emergent issues in the performance of her duties. The Respondent, the Canada Employment Insurance Commission (Commission), originally accepted that she had just cause for leaving. The Added Party, X (Employer), sought reconsideration of the decision, but the Commission maintained its decision.

[3] The Employer then appealed to the General Division of the Social Security Tribunal, and the appeal was allowed. The General Division found that the Claimant did not have just cause for leaving her employment. The Claimant appealed to the Appeal Division, which allowed the appeal, finding that the General Division had erred in law. The Appeal Division returned the matter to the General Division for reconsideration. The General Division dismissed the appeal a second time, and the Claimant now seeks leave to appeal to the Appeal Division once again.

[4] The Claimant has no reasonable chance of success. There is no arguable case that the General Division erred in law by applying the wrong test or incorrectly applying the correct test, and there is no arguable case that the General Division based its decision on an erroneous finding of fact.

ISSUES

[5] Is there an arguable case that the General Division erred in law in its interpretation and application of the test for just cause for leaving employment?

[6] 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

[7] 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.

[8] However, the Appeal Division may intervene in a General Division decision only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[9] The only grounds of appeal are listed 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.

[10] 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.

[11] 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]

---

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

Issue 1: **Is there an arguable case that the General Division erred in law in its interpretation and application of the test for just cause for leaving employment?**

[12] In my decision of November 2017, I allowed the Claimant's appeal of the February 2017 General Division decision (First Decision). I found that the General Division had erred in law by failing to determine that there were reasonable alternatives to leaving in a manner that had "regard to all the circumstances" as required by section 29(c) of the *Employment Insurance Act*. I retuned the decision to the General Division for reconsideration.

[13] The Claimant now argues that the General Division repeated the error of law of the First Decision and, specifically, that it failed to consider the cumulative effect of her various circumstances when it determined that she had reasonable alternatives to leaving.

[14] In my view, the September 2018 General Division decision did not repeat the mistakes of the First Decision. The more recent General Division decision clearly states the test as follows:

> The test for determining whether the [C]laimant had "just cause" under section 29 of the Act is whether, having regard to all the circumstances, on a balance of probabilities, the [C]laimant had no reasonable alternative to leaving the employment (*Canada (Attorney General) v. White* 2011 FCA 190). Subsection 29(c) of the Act provides a non-exhaustive list of various circumstances that can be taken into account in considering whether a claimant has just cause for voluntarily leaving their employment.[2]

[15] The General Division considered the various circumstances the Claimant raised as having influenced her decision to leave, but it did not find that any of those alleged circumstances existed. It considered the Claimant's evidence about her position and title change, the adjustment of her duties with the hiring of an accountant, and the reassignment of the maintenance worker, but it did not accept that there had been a significant change in her work duties.

[16] In addition, the General Division reviewed the communications and interactions between the Claimant and the Employer leading up to the Claimant's resignation, finding that there was insufficient evidence of antagonism between them. The General Division did not accept that office gossip about negative comments the Employer made about the Claimant and the Claimant's belief that the accountant was relaying false information about her to the Employer

[2] General Division decision at para 14.

constituted undue pressure by the Employer on the Claimant to leave her employment. It further found that there was insufficient evidence to establish that the Claimant's working conditions were a danger to her health and safety, and it rejected the Claimant's assertion that she had to leave because the senior maintenance worker resigned.

[17] In determining whether a claimant has a reasonable alternative to leaving, the General Division must have regard for "all the circumstances." Clearly, this is a reference to all the circumstances that **exist**, meaning the circumstances that can be established. The General Division was unable to find that any of the alleged circumstances had been established.

[18] Despite this, the General Division still considered whether the Claimant had a reasonable alternative to leaving with regard to the various circumstances the Claimant raised as having influenced her decision. It found that the Claimant could have discussed all of her concerns with her employer. In the case of the gossip or relaying of false information, the Claimant could have spoken with the Employer if the issue was not resolved through a discussion with the other employees involved[3]. In relation to the maintenance worker's resignation specifically, the General Division found that the Claimant could have continued working during the maintenance worker's two-week notice period[4] (during which she could presumably have discussed the resignation with her employer as well).

[19] In its conclusion, the General Division found that "the [C]laimant did voluntarily leave her employment but she did not prove just cause for doing so as, having regard to all the circumstances, on a balance of probabilities, the [C]laimant had reasonable alternatives to leaving."[5]

[20] In the First Decision, the General Division did not recognize that the legal test for just cause required a consideration of all the circumstances,[6] and it appeared to confuse establishing the existence of relevant circumstances with a finding of just cause.[7] Furthermore, the First Decision's language suggested that a claimant must show just cause in addition to showing "no

---

[3] *Supra* note 2 at para 69
[4] *Ibid* at paras 68 and 70.
[5] *Ibid.* at para 72.
[6] First Decision at para 35.
[7] *Ibid.* at para 36.

reasonable alternative to leaving," when just cause is actually established as a consequence of there being no reasonable alternative to leaving, "having regard to all the consequences."

[21] There is no arguable case that the September 2018 General Division decision repeated the above mistakes or that the General Division otherwise erred in law under section 58(1)(b) of the DESD Act in the manner in which it expressed and applied the test for just cause.

[22] The Claimant may disagree with the General Division's **conclusion** that she had reasonable alternatives to leaving and that she therefore did not have just cause for leaving. However, the Appeal Division cannot interfere with the General Division's determination that there were reasonable alternatives to leaving when the General Division has considered all the circumstances that were actually present. This determination involves the application of settled principles of law to the facts. It is therefore a question of mixed fact and law and not an error of law.[8] According to the Federal Court of Appeal in *Canada (Attorney General) v Sacrey*,[9] the interpretation of the term "just cause" within the meaning of section 30(1) of the *Employment Insurance Act* is a question of law, and its application one of mixed fact and law. The Appeal Division has no jurisdiction to interfere in questions of mixed fact and law.[10]

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 for the material before it?

[23] The Claimant has not identified any evidence that the General Division ignored or misunderstood when reaching its decision. However, I have followed the lead of the courts in such cases as *Karadeolian v Canada (Attorney General)*.[11] *Karadeolian* noted that "the 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 claimant]."

[24] Accordingly, I have reviewed the record to determine whether the General Division ignored or misunderstood any material before it. I appreciate that the General Division did not

---

[8] *Quadir v Canada (Attorney General)*, 2018 FCA 21.
[9] *Canada (Attorney General) v Sacrey*, 2003 FCA 377, cited in *Canada (Attorney General) v Campeau*, 2006 FCA 376.
[10] *Supra* note 7.
[11] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

refer to each and every piece of evidence that was before it, but, according to the Federal Court of Appeal in *Simpson v Canada (Attorney General)*, it is not required to do so. It may be presumed to have considered all the evidence.[12]

[25] I have searched for any instance of **significant** evidence that may have been ignored or overlooked, in particular, significant evidence that may have affected the General Division's findings on the existence of circumstances relevant to its assessment of reasonable alternatives. However, it was not apparent to me that the General Division ignored or misunderstood any significant evidence. I do not find that the Claimant has an arguable case that the General Division based its decision on any erroneous finding of fact that it made in a perverse or capricious fashion or without regard for the material before it under section 58(1)(c) of the DESD Act.

[26] The Claimant has no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	P. R., self-represented

[12] *Simpson v Canada (Attorney General)*, 2012 FCA 82.