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

Citation: *A. K. v Canada Employment Insurance Commission*, 2018 SST 1296

Tribunal File Number: AD-18-786, AD-18-787, AD-18-788

BETWEEN:

A. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 14, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. K. (Claimant), worked for two employment agencies (Employer 1 and Employer 2) while on a claim effective April 24, 2016. He worked only three hours for Employer 1 and one full day for Employer 2. The Claimant quit Employer 1 because he felt the work environment was not safe, and he quit Employer 2 because his work duties were not what he had expected when he was hired. He did not report all of his earnings from the two employers.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that, in each case, the Claimant had voluntarily left his employment without just cause. It also found that the Claimant had earnings from each employer, and it allocated those earnings to the weeks in which they were earned.

[4] The Commission maintained these decisions on reconsideration, and 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.

[5] There is no reasonable chance of success on appeal. The Claimant has not identified how the General Division failed to observe any principle of natural justice, or identified any evidence that the General Division ignored or misunderstood.

ISSUES

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice or that it erred by acting beyond or refusing to exercise its jurisdiction?

[7] 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

[8] 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.

[9] The Appeal Division may intervene in a decision of the General Division 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).

[10] The only grounds of appeal are stated 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.

[11] 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.

[12] To grant this application for leave and allow 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]

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[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 failed to observe a principle of natural justice or that it erred by acting beyond or refusing to exercise its jurisdiction?

[13] The only ground of appeal that the Claimant selected when completing his application for leave to appeal is the one concerned with natural justice and jurisdiction.

[14] 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 them. 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 the Claimant's understanding of the process, or with 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 that the member had prejudged the matter. Therefore, there is no arguable case that the General Division erred under section 58(1)(a) of the DESD Act by failing to observe a principle of natural justice.

[15] Turning to jurisdiction; there were several issues before the General Division. The various reconsideration decisions before the General Division found the Claimant to have voluntarily left his employment with both Employer 1 and Employer 2 without just cause and to have received earnings per sections 35(1) and (2) of the *Employment Insurance Regulations* (Regulations) from each employer. This resulted in the Claimant's disqualification from receiving benefits, under section 30 of the *Employment Insurance Act* (EI Act), and in the Commission's allocation of those earnings, under section 36(4) of the Regulations, to the period in which the Claimant performed services for those earnings. The Claimant remained liable for any overpayment under section 43 of the EI Act and was required to repay it under section 44.

[16] The Claimant did not suggest that the General Division failed to consider these issues or that it considered issues that it should not have considered, and he did not identify any other jurisdictional error. Therefore, there is no arguable case that the General Division erred under section 58(1)(a) of the DESD Act by refusing to exercise its jurisdiction or by acting beyond its 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 for the material before it?

[17] Although the only ground of appeal the Claimant selected involves his assertion of a natural justice error, the Claimant is clearly taking issue with the fact that the General Division did not accept his safety concerns as just cause for leaving his employment with Employer 1. Furthermore, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal. In *Karadeolian v Canada (Attorney General)*,[2] the Court states 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".

[18] The Claimant did not identify any evidence that the General Division ignored or misunderstood when it reached its conclusions, but, in accordance with the direction of *Karadeolian*, I have reviewed the record for any other significant evidence that might have been ignored or overlooked and may, therefore, raise an arguable case.

[19] The General Division referred to the various safety concerns the Claimant raised in relation to Employer 1,[3] as well as Employer 1's evidence that it inspected its clients (job employers) to ensure that worksites were safe and that it had heard no concerns from others that it had placed at the site where the Claimant worked.[4] The General Division explained that it gave more weight to the Claimant's earlier statements that he did not like the job and that it was not the right fit, and it noted that the Claimant had not raised his safety concerns with the employer. It found that there was insufficient evidence to conclude that the work conditions were a danger to health and safety in addition to finding that the Claimant had not discussed his concerns with Employer 1 before quitting.

[20] The General Division also acknowledged that the Claimant asserted that Employer 2 provided no training and that the job was not safe. However, the General Division stated that it was not satisfied that the conditions at Employer 2 constituted a danger to health and safety, such

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[2] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.
[3] General Division decision, para 23.
[4] General Division decision, para 25, GD3-23.

that the Claimant had no reasonable alternative to leaving for the same reasons as with Employer 1, that is; that there was insufficient evidence that the conditions were actually dangerous, and that the Claimant did not discuss his concerns with the employer or a superior at his workplace.

[21] The Claimant mentioned training and safety, but he had also testified to his dissatisfaction with having to work in "tooling" when he had understood he was hired as a machine operator.[5] This is consistent with his earlier statements to the Commission and with Employer 2's statements to the Commission.[6] There was no evidence that the Claimant had considered his lack of training on his first day of work to have been a safety concern or that he had raised safety concerns with his employer, the Commission, or anyone else before the General Division hearing.

[22] I appreciate that the Claimant disagrees with the manner in which the General Division weighed and analyzed the evidence and with its conclusions, but simply disagreeing with the findings does not establish a ground of appeal under section 58(1) of the DESD Act.[7] nor does a request to reweigh the evidence establish a ground of appeal that has a reasonable chance of success.[8]

[23] On review of the record, I was unable to discover an arguable case that the General Division overlooked or misunderstood evidence relevant to its finding that the Claimant had reasonable alternatives to leaving either employer or to the issue of earnings and allocation of earnings.

[24] There is no arguable case that the General Division based its decision on an erroneous finding of fact under section 58(1)(c) of the DESD Act.

[25] I note that the Claimant stated that he should not have to pay back the benefits that he received after his disqualification and that the amount should at least be reduced if he must repay it. The General Division stated that "[a] claimant is liable to repay an amount paid by the

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[5] GD3-22.
[6] GD3-22.
[7] *Griffin v Canada (Attorney General)*, 2016 FC 874.
[8] *Tracey v Canada (Attorney General)*, 2015 FC 1300.

[Commission] to the claimant as benefits for any period for which the claimant is disqualified; or to which the claimant is not entitled (section 43, *Employment Insurance Act*).” The Claimant did not argue that the General Division erred in law, but, in any event, there is no arguable case that the General Division erred in law by failing to waive or reduce the amount to be repaid. Neither the Commission nor the General Division has the jurisdiction to ignore the plain meaning of the EI Act.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented