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

Citation: *S. Y. v Canada Employment Insurance Commission*, 2018 SST 1285

Tribunal File Number: AD-18-735

BETWEEN:

S. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 11, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. Y. (Claimant), had been working for his employer for some time when his employer hired a new on-site supervisor and determined to enforce its workplace policies. The Claimant was required to clean a larger area, cover for other employees, and do some additional duties related to his usual work. The new supervisor issued a number of disciplinary notices, and he and the Claimant did not get along well. The Claimant believed the additional stress from these new arrangements was impacting his health, and he eventually quit. When the Claimant applied for Employment Insurance benefits, the Respondent, the Canada Employment Insurance Commission (Commission), refused his claim, finding that he had voluntarily left his employment without just cause.

[3] This decision was maintained by the Commission reconsideration decision. The Claimant appealed to the General Division of the Social Security Tribunal, but his appeal was dismissed. He now seeks leave to appeal to the Appeal Division.

[4] The appeal has no reasonable chance of success. The Claimant did not describe how the General Division erred in natural justice or in jurisdiction, and I have been unable to discover any evidence that the General Division ignored or misunderstood.

ISSUES

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice or that it made an error of jurisdiction?

[6] Is there an arguable case that the General Division erroneously found that the Claimant had no reasonable alternative to leaving his employment without regard to his evidence of changed work circumstances, work circumstances that were dangerous to his health or safety, antagonism with a supervisor, or harassment?

ANALYSIS

[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 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).

[9] The only grounds of appeal are as follows:

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 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]

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

[12] The Claimant indicated on his application for leave to appeal that he believes the General Division failed to observe a principle of natural justice or made an error of jurisdiction.

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

[13] 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. The Claimant has not raised a concern about the adequacy of the notice of the General Division hearing, the pre-hearing disclosure of documents, the manner in which the General Division hearing was conducted or his understanding of the process, or any other action or procedure that could have affected his right to be heard or to answer the case. He has not suggested that the General Division member was biased or that she had prejudged the matter, either.

[14] There is no arguable case that the General Division failed to observe a principle of natural justice. Likewise, the Claimant has not identified how the General Division refused to exercise its jurisdiction or acted beyond its jurisdiction. Therefore, there is no arguable case that the General Division erred under section 58(1)(a) of the DESD Act.

Issue 2: Is there an arguable case that the General Division erroneously found that the Claimant had no reasonable alternative to leaving his employment without regard to his evidence of changed work circumstances, work circumstances that were dangerous to his health or safety, antagonism with a supervisor, or harassment?

[15] The Claimant did not specifically argue this ground. However, following the lead of the courts in cases such as *Karadeolian v Canada (Attorney General)*,[2] I have reviewed the file to see whether the General Division ignored or misunderstood any relevant evidence. This would be any evidence that could be relevant to the General Division's findings that the Claimant could have followed up with the employer and union about his concerns, met with a doctor about his stress concerns, or found another job before quitting.

[16] The General Division considered whether the change in the Claimant's work circumstances constituted "a significant change in work duties", which is a relevant circumstance listed at section 29(c)(ix) of the *Employment Insurance Act* (EI Act). The General Division found that the Claimant's reassignment to clean a different building, the occasional requests to cover absent colleagues, and the employer's requirement that he stock janitorial rooms did not amount to a significant change in work duties. The Claimant did not point to any evidence that the General Division misunderstood or ignored in reaching this conclusion, and I have found none.

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[2] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

[17] The General Division also considered whether the Claimant’s circumstances amounted to “working conditions that constitute a danger to health or safety”, another relevant circumstance listed at section 29(c)(iv) of the EI Act. It is clear that the General Division understood that the Claimant attributed his heart and throat symptoms to stress and that the Claimant considered the environment created by the new supervisor to be stressful. However, the General Division did not accept that the Claimant’s work conditions were dangerous because he did not provide a medical diagnosis or any medical evidence to connect his work circumstances with his symptoms. I have likewise been unable to discover evidence that would link his symptoms to any medical condition caused or aggravated by his work environment.

[18] The Claimant also asked the General Division to accept that he had been harassed by his supervisor. The General Division considered the Claimant’s evidence that the new on-site supervisor scrutinized how he worked and the quality of his work, that the supervisor gave him frequent disciplinary notices in circumstances where other employees may not have received them, and that the supervisor would not listen to his objections. The General Division reviewed the several disciplinary notices in evidence, the employer’s policies, and the incidence of disciplinary notices that the employer gave to other employees. The General Division found that the supervisor was not harassing the Claimant with repeated discipline notices but was rather enforcing company policy. I do not find that the General Division ignored or misunderstood any evidence in making this determination.

[19] Finally, the General Division considered the Claimant’s evidence that there was antagonism between his supervisor and himself. According to section 29(c)(x) of the EI Act, antagonism with a supervisor may be a relevant circumstance if the claimant is not primarily responsible for the antagonism. The Claimant submitted that he was sent home from work, was frequently written up for minor issues, and had his work scrutinized. He also said that the supervisor was disrespectful and would not listen to him. However, the General Division found that the antagonism between the Claimant and the supervisor appeared to revolve around the Claimant’s own actions in refusing to respect the employer’s policies. The Claimant has not identified any evidence that the General Division ignored or misunderstood that would challenge the General Division’s decision.

[20] On the basis of its review, the General Division found that the Claimant's work circumstances were not so intolerable that the Claimant could not have found another job before quitting. The General Division also said that, if his health concerns were the issue, he could have seen a doctor to confirm that his concerns were work-related before leaving his employment. In relation to the harassment and antagonism, the General Division stated that it would have been reasonable for the Claimant to follow the company policies, presumably to see whether this would reduce or eliminate what he perceived as harassment or antagonism.

[21] In my review, I have not discovered any evidence that the General Division ignored or misunderstood when reaching its various conclusions. Furthermore, the Claimant has not pointed to any other relevant circumstance that the General Division should have considered before determining whether reasonable alternatives to voluntarily leaving existed. The evidence does not suggest any other circumstances that the General Division should have considered.

[22] I therefore find that there is no arguable case under section 58(1)(c) of the DESD Act 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] I appreciate that the Claimant disagrees with how the General Division weighed the evidence and the conclusions that it reached, but simply disagreeing with the findings does not disclose a valid ground of appeal under section 58(1) of the DESD Act.[3] Unfortunately for the Claimant, he cannot resubmit his evidence and hope for a different decision.[4] I am not permitted to substitute my view of the evidence for that of the General Division, as confirmed in the Federal Court decision of *Tracey v Canada (Attorney General)*.[5]

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

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	S. Y., self-represented