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

Citation: *H. H. v Canada Employment Insurance Commission*, 2018 SST 1297

Tribunal File Number: AD-18-816

BETWEEN:

H. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 17, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, H. H. (Claimant), was dismissed from his employment for insubordination to management. The Respondent, the Canada Employment Insurance Commission (Commission), denied his application for Employment Insurance benefits because it found that he had been dismissed for misconduct. The Commission maintained this decision when the Claimant asked it to reconsider. 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.

[3] There is no reasonable chance of success. The Claimant did not raise an arguable case that the General Division failed to observe a principle of natural justice or erred in jurisdiction, and I have been unable to discover an arguable case that it ignored or misunderstood relevant evidence.

ISSUE

[4] 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?

ANALYSIS

[5] 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).

[6] To grant this application for leave and to allow the appeal process to move forward, I must first find that there is a reasonable chance of success on one or more of the 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 erred by acting beyond or refusing to exercise its jurisdiction?

[7] The only ground of appeal advanced by the Claimant is section 58(1)(a) of the DESD Act, which states that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[8] 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, or with the manner in which the General Division hearing was conducted or his understanding of the process. Nor has he suggested that the General Division member was biased or that the member had prejudged the matter.

[9] However, the Claimant objects that there were three witness statements used against him and that he "could have used witnesses" of his own.[2] This could be understood to be an objection that the General Division failed to observe his natural justice right to be heard. The Claimant justified his appeal to the General division on the basis that he had requested but had not been given the evidence against him and that he had witnesses that he had not been given a chance to produce.[3] The General Division hearing process allows for parties to bring witnesses, but there was no evidence that the Claimant requested or was denied the opportunity to bring witnesses or that he asked for advice about the process. In addition, I note that the Claimant brought a companion to the hearing and that, referring back to the Claimant's notice of appeal, the General Division asked whether this companion was the witness the Claimant wanted to present. The Claimant identified his companion as an observer only. He did not then state a desire or intention to call any witnesses or object to continuing without additional witnesses. I do not accept that the

[1] *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] AD1-3.
[3] GD2-2.

Claimant's failure to bring witnesses to support his position means that the General Division interfered with the Claimant's ability to present his case or be heard. There is no arguable case that the General Division failed to observe a principle of natural justice in this regard.

[10] I also find that the General Division docket, including the witness statements to which the Claimant objects, had been disclosed to the Claimant in advance of the hearing and that he was not surprised by those statements. The General Division member asked the Claimant about the documents that he brought to the hearing, and he confirmed that they were the documents the Tribunal had sent to him. I note that Tribunal records reveal that a package described as "GE-18-2363 Docket GD1 to GD5" was sent to the Claimant on August 27, 2018, and that he signed for the documents on August 31, 2018. The Claimant may not have anticipated that the General Division member would rely on those statements as it did, but the statements themselves are found at GD3-22 to GD3-27 of the docket, which was in his possession well before the October 16, 2018, General Division hearing.

[11] The fact that the Claimant did not bring witnesses to his hearing and that he may not have anticipated the manner in which the General Division would assess the evidence, does not raise an arguable case that the General Division failed to observe a principle of natural justice. The Claimant did not point to any other way in which the General Division may have failed to observe a principle of natural justice under section 58(1)(a) of the DESD Act.

[12] Turning to jurisdiction; the issue before the General Division was whether the Claimant was dismissed for misconduct. The Claimant did not suggest that the General Division failed to consider this issue, that it considered issues that it should not have considered, or that it made some other jurisdictional error and no such error is apparent on the face of the decision. 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.

[13] Although the only ground of appeal selected by the Claimant involves his assertion of a natural justice error, the Claimant also disagreed with the General Division's finding that he knew his actions would cost him his job. However, he did not identify any error of fact that could

have influenced the General Division's finding that he "knew or ought to have known that his conduct was such that it would result in dismissal."[4]

[14] The Claimant failed to identify any error of fact but the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal. In *Karadeolian v Canada (Attorney General),*[5] the Court states as follows: "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 applicant in that case]."

[15] In accordance with the direction of *Karadeolian,* I have reviewed the record for any other evidence that might have been ignored or overlooked and that may, therefore, raise an arguable case. I did not discover any significant evidence that could have been relevant to the General Division's decision but which was arguably ignored or misunderstood, and I also did not identify any finding that could be said to be perverse or capricious in the light of the evidence available. Therefore, there is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act by basing 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.

[16] 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,[6] nor does a request to reweigh the evidence establish a ground of appeal that has a reasonable chance of success.[7]

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

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[4] General Division decision, para 21.
[5] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.
[6] *Griffin v Canada (Attorney General)*, 2016 FC 874.
[7] *Tracey v Canada (Attorney General)*, 2015 FC 1300.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	H. H., self-represented