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

Citation: *R. H. v Canada Employment Insurance Commission*, 2018 SST 1055

Tribunal File Number: AD-18-852

BETWEEN:

R. 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 31, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. H. (Claimant), took a leave from his employment and would not tell the employer when he expected he would return. The employer considered him to have quit. When he applied for Employment Insurance benefits, the Respondent, the Canada Employment Insurance Commission (Commission), agreed that the Claimant had quit and found that he left his employment without just cause. As a result, the Claimant was disqualified from receiving benefits. The Claimant asked the Commission to reconsider, but the Commission maintained its decision. The Claimant then appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal and the Claimant now seeks leave to appeal to the Appeal Division.

[3] The appeal has no reasonable chance of success. The Claimant did not identify any evidence that was ignored or overlooked or that raises an arguable case that the General Division based its decision on an erroneous finding of fact.

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 evidence before it?

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 Ac*t (DESD Act).

[6] The grounds of appeal in section 58(1) of the DESD Act 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.

[7] 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]

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 evidence before it?

[8] The Claimant submits that the General Division based its decision on an erroneous finding of fact; that is, section 58(1)(c) of the DESD Act. He argues that the General Division overlooked his evidence that he was unfit for work until May 29, 2017, due to medical reasons, that he was teased about his medical condition when he returned to work after his surgery, and that he was under stress as a result. He attached a copy of a May 23, 2017, note from his doctor confirming his medical excuse.

[9] The medical note had not been submitted to the Commission or the General Division and was not included in the appeal file. During an exchange about the uncertainty of the Claimant's surgery date, the General Division member offered the Claimant an opportunity to submit additional medical evidence after the hearing,[2] but the General Division did not receive any additional evidence.

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[1] *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] Audio recording of General Division hearing at 00:17:32.

[10] I can only consider whether the General Division erred based on the evidence that was before it,[3] and there is no arguable case that the General Division erred by failing to take into consideration evidence that it did not have before it.

[11] The General Division acknowledged that the Claimant had surgery earlier in 2018, that his co-workers teased him about it, and that this increased the Claimant's stress. It also acknowledged that these reasons were part of the Claimant's justification for taking a three-week leave on June 9, 2018. However, the General Division noted that the Claimant did not present medical evidence to confirm the Claimant's experience of stress or its impact on his work. After considering the Claimant's stress from his surgery and the teasing he endured as a result, together with the Claimant's other concerns, the General Division still found that the Claimant had reasonable alternatives to leaving.

[12] The General Division's findings took the Claimant's evidence into account. The Claimant disagrees with those findings, but there is no arguable case that they are perverse or capricious or that the findings ignored or misunderstood the evidence of the Claimant's surgery or its impact on the Claimant or his work.

[13] The Claimant also submits that the General Division failed to consider the error in the Record of Employment (ROE) prepared by the employer. The error had to do with the length of time the Claimant was employed. The Claimant suggests that this error supports a lack of clarity and consistency from the employer and that this is related to how the employer can bully him into accepting liability and jeopardizing his credibility.[4] As stated by the Federal Court of Appeal in *Simpson v Canada (Attorney General)*,[5] a tribunal need not refer in its reasons to each and every piece of evidence before it, but it is presumed to have considered all the evidence. The Claimant has not shown how the mistake on his ROE is relevant to his reason for leaving the employment, and there is no arguable case that the General Division erred by overlooking the ROE or by failing to analyze its evidentiary value.

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[3] *Mette v Canada (Attorney General)*, 2016 FCA 276.
[4] AD1-2, para. 2
[5] *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[14] The Claimant's final submission is that the General Division did not consider the fact that he had not obtained legal or other advice on his appeal and that he was never told that he could not submit new information until after he received the General Division decision to deny his appeal. The Claimant's knowledge of the appeal process is not relevant to whether he voluntarily left his employment or whether he had just cause for doing so. There is no arguable case that the General Division's failure to reference or analyze the Claimant's understanding of the process resulted in any finding that was perverse or capricious or which was reached without regard for the material before the General Division.

[15] In accordance with the Federal Court's direction in *Karadeolian v Canada (Attorney General)*,[6] I have reviewed the record for any other evidence that might have been ignored or overlooked and that may, therefore, raise an arguable case under section 58(1)(c) of the DESD Act. I have not discovered any significant evidence that could have been relevant to the General Division's decision but which was arguably ignored or misunderstood. Nor is there an arguable case that any of the General Division's findings might be considered perverse or capricious, in light of the evidence available.

Natural Justice

[16] The Claimant submitted that he had an imperfect understanding of the appeal process. He did not expressly argue that the General Division erred by failing to observe a principle of natural justice under section 58(1)(a) of the DESD Act but, if the Claimant's intention was to suggest that his natural justice right to be heard was impacted by the fact that the General Division did not inform him of how best to proceed, then I would observe the following:

- The General Division member is intended to be an impartial adjudicator. The General Division member outlined the issues that the Claimant should address in his testimony, but he could not advise the Claimant on what evidence the Claimant should present to support his appeal. It was open to the Claimant to seek assistance from other Tribunal staff prior to the hearing, to access the Tribunal's online information, or to seek advice elsewhere.

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

- The General Division member offered the Claimant an opportunity to present his case as the Claimant chose, and he proceeded with detailed questioning to draw out the evidence of the Claimant-at the request of the Claimant.[7] The Claimant qualified this request with the comment that he might follow the General Division's questioning with additional evidence. However, when the General Division member gave him the opportunity near the close of the hearing, the Claimant had nothing to add.[8]

- In the course of the hearing, the General Division suggested that the Claimant may wish to supply additional documentary evidence after the hearing,[9] but the Claimant did not state or imply any intention to do so.

[17] Therefore, there is no arguable case that the General Division failed to observe a principle of natural justice under section 58(1)(a) of the DESD Act.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	R. H., self-represented

[7] Audio record of General Division hearing at 00:05:25.
[8] *Ibid.* at 01:14:52.
[9] *Supra* note 2.