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

Citation: *B. C. v Canada Employment Insurance Commission*, 2019 SST 7

Tribunal File Number: AD-18-790

BETWEEN:

B. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: January 8, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, B. C. (Claimant), voluntarily left her job because she lost her accommodations and could not arrange an affordable replacement. She applied for Employment Insurance benefits, but the Respondent, the Canada Employment Insurance Commission (Commission, refused her claim. The Commission found that she did not have just cause for leaving her employment, and it maintained this decision when the Claimant asked it to reconsider. The Claimant then appealed to the General Division of the Social Security Tribunal, but the General Division dismissed her appeal. The Claimant now seeks leave to appeal to the Appeal Division.

[3] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division erred in law, and I have been unable to discover any evidence that was ignored or misunderstood.

ISSUE

[4] Is there an arguable case that the General Division erred in law by improperly considering the income of the Claimant's spouse or the Claimant's lack of a driver's licence when it found that she had reasonable alternatives to leaving?

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 erred in law by improperly considering the income of the Claimant's spouse or the Claimant's lack of a driver's licence when it found that she did not have reasonable alternatives to leaving?

[8] The test for determining whether a claimant had "just cause" under section 29 of the *Employment Insurance Act* (EI Act) is whether, having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment.[2] Section 29(c) outlines a number of relevant circumstances but, as noted by the General Division, these are not the only circumstances that can be relevant to determining whether a claimant had a reasonable alternative to leaving.

[9] The burden of proof is on the Claimant to establish that she had just cause for leaving.[3] This means that it is up to the Claimant to satisfy the General Division that the only reasonable course of action that was open to her in the circumstances was to leave her employment.[4] In support of her argument that she had no reasonable alternative to leaving, the Claimant stated that she had lost her accommodations and could not find an affordable replacement. She also said

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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] *Canada (Attorney General) v White*, 2011 FCA 190.
[3] *Green v Canada (Attorney General)*, 2012 FCA 313.
[4] *Canada (Attorney General) v Laughland*, 2003 FCA 129.

that she could not live in the home she shared with her husband in another community because it was too far from her work and she had no driver's licence but that she, nonetheless, had expenses associated with maintaining the home. As I understand it, the essence of the Claimant's argument is that she had to quit because her salary would have been insufficient to cover all of her expenses, including the increased cost of any available accommodation within walking distance of her work.

[10] The Claimant argues that she should not have been denied Employment Insurance benefits on the basis of her lack of a driver's licence or her husband's finances. As I understand her appeal, she is now arguing that the General Division should not have considered this information because it is either irrelevant or somehow improper.

[11] The Claimant would be correct to observe that her eligibility for Employment Insurance benefits is not dependent on how much money her husband makes. However, the General Division decision did not suggest that Employment Insurance benefits are income-tested. While it considered the finances of the Claimant's husband, this was for the purpose of exploring the Claimant's claim that she had no choice but to quit because she could not meet all of her expenses if she continued to work. So far as her driver's licence, there is no indication that the General Division based its decision on any finding related to whether or not she had a driver's licence or that it considered this to be part of any eligibility criteria.

[12] The General Division did not misunderstand its task or misapply the EI Act. The Claimant needed to establish that she had no reasonable alternative to leaving her employment in order to show that she had just cause for leaving under section 29(c) of the EI Act and that she should not be disqualified from receiving benefits under section 30 of the EI Act. The Claimant was seeking to establish that the additional expense of alternate accommodations left her no choice but to leave her job. The General Division reviewed the Claimant's husband's finances only because they were a possible source of funds to meet the Claimant's expenses and were, therefore, relevant to its consideration of the Claimant's argument.

[13] The General Division correctly defined "just cause" as existing where there is no reasonable alternative to leaving, and it correctly observed that the law does not accept financial

circumstances alone as being sufficient to establish just cause.[5] There is no arguable case that the General Division erred in law under section 58(1)(b) of the DESD Act by applying the wrong test.

[14] There is also no arguable case that the General Division may have erred by misapplying the test. The General Division found that the Claimant might have done more to locate affordable accommodation before quitting and that, therefore, the Claimant had a reasonable alternative to leaving. I appreciate that the Claimant does not agree with the General Division's assessment of the "reasonable alternative," but I cannot intervene in the General Division's decision on this question.

[15] The manner in which the General Division applies the legal test to the particular facts of the case involves what is called a "question of mixed fact and law."[6] According to the Federal Court of Appeal in *Quadir v Canada (Attorney General)*,[7] the Appeal Division does not have jurisdiction to intervene on a question of mixed fact and law.

[16] The only ground of appeal selected by the Claimant relates to her assertion of an error of law. The Claimant did not assert that the General Division made any finding without considering the evidence or based on a misunderstanding of evidence; however, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal. In *Karadeolian v Canada (Attorney General)*,[8] the Court states as follows: "[T]he 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]."

[17] 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, but I have not found other significant evidence that the General Division might have ignored or overlooked and that may, therefore, raise an arguable case.

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[5] *Canada (Attorney General) v Campeau*, 2006 FCA 376; *Canada (Attorney General) v Tremblay*, A-50-94.
[6] *Canada (Attorney General) v Sacrey*, 2003 FCA 377; *Canada (Attorney General) v Richard*, 2009 FCA 122.
[7] *Quadir v Canada (Attorney General*), 2018 FCA 21.
[8] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

[18] There is no 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 under section 58(1)(c) of the DESD Act.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	F. C., for the Applicant