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

Citation: *M. F. v Canada Employment Insurance Commission*, 2019 SST 9

Tribunal File Number: AD-18-856

BETWEEN:

**M. F.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

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Leave to Appeal Decision by: Stephen Bergen

Date of Decision: January 8, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, M. F. (Claimant), lost his employment after his employer asked him to report to a newly hired manager and he refused. He applied to the Respondent, the Canada Employment Insurance Commission (Commission), for Employment Insurance benefits, but the Commission refused his claim, finding that he was dismissed for misconduct. The Commission maintained that initial decision on reconsideration, and the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal, and he now seeks leave to appeal to the Appeal Division.

[3] The Claimant has no reasonable chance of appeal. He has not identified in what way the General Division failed to observe a principle of natural justice or erred in law, and it is not apparent that any evidence was ignored or misunderstood.

### ISSUES

[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?

[5] Is there an arguable case that the General Division erred in law?

[6] 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

[7] 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).

[8] 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.

[9] 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 erred by acting beyond or refusing to exercise its jurisdiction?

[10] The Claimant selected all three grounds of appeals of appeal in his leave to appeal application. The first of these grounds of appeal is concerned with an error of natural justice or an error of jurisdiction.

[11] 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 him or her.

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

[12] The Claimant did not explain the basis for his belief that the General Division made an error of natural justice. However, the Claimant's application for leave submitted that there was a "lack of asking the right questions" and a lack of "questioning the right person at [the Claimant's] former place of employment " The Claimant also said that "EI" did not investigate the reason for his dismissal thoroughly enough>

[13] As I understand it, the Claimant's concern appears to relate more to the manner in which the Commission investigated the claim before its original denial—rather than with the General Division's decision-making. However, I have no jurisdiction to review the original investigation or decision. This appeal is concerned only with any errors that may have been made by the General Division.

[14] The General Division must consider all of the evidence in the reconsideration file and any evidence or argument that the parties bring the appeal, and it may assist a claimant in presenting their evidence by asking the claimant questions. However, the General Division is not obligated to seek out evidence that is not before it. There is no arguable case that the General Division failed to observe a principle of natural justice by not asking the right questions or not looking deeper into the circumstances.

[15] Turning to jurisdiction, the only issue that was before the General Division was whether the Claimant lost his job as a result of misconduct. The Claimant did not suggest that the General Division failed to consider this issue or that it considered issues that it should not have considered, nor did the Claimant identify any other jurisdictional error. Therefore, there is no arguable case that the General Division refused to exercise its jurisdiction or acted beyond its jurisdiction.

[16] 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 erred in law?**

[17] While the Claimant asserted an error of law, the Claimant did not suggest what this error might be.

[18] Section 30(1) of the *Employment Insurance Act* (EI Act) states that a claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct. The meaning of "misconduct" for the purpose of the EI Act, has been interpreted by the courts. For the General Division to find misconduct, the Commission must establish that the Claimant engaged in the conduct; that the conduct was conscious, deliberate, or intentional, that the conduct breached a duty or obligation to the employer, and that the Claimant knew or ought to have known that his conduct could lead to his dismissal.

[19] The General Division stated the legal test accurately and applied it to the facts.[2] Therefore, there is no arguable case that the General Division erred in law under section 58(1)(b) of the DESD Act.

**Issue 3: 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?**

[20] The Claimant argues that there has been a "disacknowledgement of documents provided [Record of Employment] (ROE) and disacknowledgement of errors made by the former employer and errors on testimonies [*sic*]."[3] The Claimant also suggests that the General Division ignored documentation supporting his wrongful dismissal claim.

[21] The General Division did not refer to each of the two versions of the Claimant's ROE. However, I note that the Commission originally determined that the Claimant had been dismissed (which was consistent with the amended ROE), that the General Division ultimately agreed that he had been dismissed, and that the Claimant had never disputed that he was dismissed. Once it had been established that the Claimant was dismissed, the remaining question was whether the Claimant was dismissed because of misconduct. The fact that the employer had prepared an earlier ROE in which he indicated that the Claimant quit is of little relevance to whether the Claimant's conduct amounted to misconduct.

[22] The additional documentation that the Claimant provided included the second, amended ROE, his lawyer's demand for additional severance, and the employer's response to the lawyer's

[2] General Division decision at paras 11–19.
[3] AD1-3

demand.[4] None of this documentation is significant, or particularly relevant, to the determination that the Claimant was dismissed for misconduct. The Federal Court of Appeal has confirmed that the General Division is not required to refer to each and every piece of evidence, but is presumed to have considered all the evidence.[5]

[23] The Claimant did not explain what he means by disacknowledgement of the employer's errors or testimony. In accordance with the direction of the Federal Court,[6] I have reviewed the audio recording of the hearing and the rest of the evidence in the General Division file to determine whether there was any instance in which the General Division may have overlooked or misunderstood evidence (including evidence about or by the employer). I was unable to find an example of overlooked or misunderstood evidence or an arguable case that such an error occurred.

[24] I appreciate that the Claimant feels he was treated unfairly by his employer and that he does not believe that his unwillingness to work under the new manager should be considered misconduct. However, his simple disagreement with the General Division's findings does not establish a ground of appeal under section 58(1) of the DESD Act.[7] 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] The Claimant has no reasonable chance of success on appeal.

**CONCLUSION**

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

Stephen Bergen
Member, Appeal Division

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| REPRESENTATIVE: | M. F., self-represented |

[4] GD6.
[5] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[6] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.
[7] *Griffin v Canada (Attorney General)*, 2016 FC 874.