



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. D. v Canada Employment Insurance Commission*, 2019 SST 31

Tribunal File Number: AD-18-770

BETWEEN:

R. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: January 16, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] R. D. (Claimant) filed an initial claim for regular Employment Insurance (EI) benefits in October 2017. Following an investigation, the Respondent, the Canada Employment Insurance Commission (Commission), refused to pay these benefits to the Claimant because he had lost his job as a result of his misconduct.¹ The Claimant challenged the Commission's initial decision, but the Commission maintained it on reconsideration. The Claimant then appealed the Commission's decision to the Tribunal's General Division, but it dismissed his appeal.

[3] The Claimant now wants to appeal the General Division decision to the Appeal Division, but he requires leave (or permission) to appeal for the file to move forward. In short, the Claimant is arguing that his co-workers conspired against him, that he has been the victim of a serious injustice, and that the Tribunal is corrupt. Unfortunately for the Claimant, however, I have concluded that his appeal has no reasonable chance of success, meaning that I must refuse his application for leave to appeal.

ISSUES

[4] In reaching this decision, I focused on the following issues:

- a) Do any of the Claimant's arguments fall within a recognized ground of appeal, and, if so, do they amount to an arguable ground on which the appeal might succeed?
- b) Did the General Division arguably overlook or misinterpret relevant evidence?

¹ *Employment Insurance Act*, s 30.

ANALYSIS

The Appeal Division's Legal Framework

[5] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, the only relevant errors are whether the General Division:

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or
- c) 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.

[6] There are also procedural differences between the Tribunal's two divisions. Most cases before the Appeal Division follow a two-step process: the leave to appeal stage and the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to move forward. This is a preliminary hurdle aimed at filtering out cases that have no reasonable chance of success.² The legal test that applicants need to meet at this stage is a low one: Is there any arguable ground on which the appeal might succeed?³

Issue 1: Do any of the Claimant's arguments fall within a recognized ground of appeal, and, if so, do they amount to an arguable ground on which the appeal might succeed?

[7] I would summarize the Claimant's arguments from his application for leave to appeal as falling under the following topics:

- a) The Claimant was the victim of a premeditated plan to get him fired because he was from the Maritimes and needed fewer hours to qualify for EI benefits. Even his shop

² DESD Act, s 58(2).

³ *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

steward provided him with misinformation and, in doing so, prevented him from grieving his dismissal;

- b) The Claimant's foreman had failed to follow proper procedures and, in doing so, allowed the Claimant to be criticized by people who had no right to do so, and in spite of the fact that there were no other complaints about the quality of his work. The Claimant therefore had reasons for acting the way that he did and should not have been fired for his behaviour; and
- c) The Tribunal is a corrupt organization designed to deny 75% of EI appeals.

[8] The General Division wrote a lengthy decision thoroughly discussing the evidence relating to the Claimant's first two points described above. The Claimant is now challenging the General Division's conclusion but has not specified what error the General Division might have made when reaching that conclusion.

[9] The Appeal Division is not a place for the Claimant to reargue his case in hopes that the evidence might be reassessed in his favour.⁴ At a minimum, the Claimant should have provided some detail about the errors that he alleges the General Division made and how those errors fall within one of the three grounds of appeal described above.⁵ The Tribunal explained this to the Claimant in its letters dated October 25, November 2, and November 19, 2018, and on the Notice of Appeal form.⁶ Nevertheless, the Claimant has not pointed to any relevant errors in the General Division's decision, and none are immediately obvious to me.

[10] The Claimant's third argument raises natural justice concerns, but it is a very serious charge that challenges the integrity of the entire Tribunal and of its members. More specifically, the Claimant alleges that the Tribunal was set up with a quota system designed to deny 75% of the cases that come before it.

⁴ *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.

⁵ *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁶ AD1-2.

[11] Case law requires that serious allegations such as these be raised at the earliest opportunity and be based on evidence, but the Claimant has not done either of these things.⁷ Indeed, the Claimant complained to the General Division, both before and at the hearing, about the rate at which the Tribunal overturns Commission decisions. Yet, he advanced no evidence to support his arguments and, when answering a question from the General Division member, the Claimant specifically said that he was not raising an allegation of bias against the Tribunal.⁸ In my view, therefore, case law prevents the Claimant from raising these arguments now.

[12] As a result, I have concluded that the Claimant's arguments have no reasonable chance of success.

Issue 2: Did the General Division arguably overlook or misinterpret relevant evidence?

[13] Regardless of the conclusion above, I am mindful of Federal Court decisions in which the Appeal Division has been told to go beyond the four corners of the written materials and assess whether the General Division might have misinterpreted or failed to properly consider any of the evidence.⁹ If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[14] After reviewing the documentary record, listening to the audio recording of the General Division hearing, and examining the decision under appeal, I am satisfied that the General Division neither overlooked nor misinterpreted relevant evidence.

[15] To the contrary, the General Division listened to the Claimant's entire case and carefully assessed his evidence and arguments. Indeed, as I listened to the audio recording of the General Division hearing, I particularly noted the patience and professionalism that the General Division member displayed throughout the hearing. Indeed, during the General Division hearing, the

⁷ *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 11; *Hennessey v Canada*, 2016 FCA 180 at paras 20–22; *Punia v Canada (Citizenship and Immigration)*, 2013 FC 1078 at para 39; *Arrachch v Canada (Minister of Citizenship and Immigration)*, 2006 FC 999 at para 20.

⁸ GD2-2; audio recording of General Division hearing at approximately 3:20 to 5:20.

⁹ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

Claimant described the Tribunal member as being full of integrity and someone who was easy to talk to.

CONCLUSION

[16] I sympathize greatly with the very difficult circumstances in which the Claimant finds himself and understand the disappointment he must have felt after reading the General Division decision. Having concluded that the Claimant's appeal has no reasonable chance of success, however, I have no choice but to refuse his application for leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	R. D., self-represented
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