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

Citation: *K. G. v Canada Employment Insurance Commission*, 2019 SST 130

Tribunal File Number: AD-19-42

BETWEEN:

**K. G.**

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: February 13, 2019

Canada

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, K. G. (Claimant), established a benefit period based on full-time earnings and began to collect Employment Insurance benefits. During his benefit period, he accepted a part-time job but then took a leave of absence to visit family outside of Canada. He did not inform his employer that he had returned until he had been back for about a month, at which time he discovered that his employer had replaced him. When the Respondent, the Canada Employment Insurance Commission (Commission), became aware of the circumstances, it determined that the Claimant had voluntarily left his part-time employment without just cause and disqualified him from receiving benefits. As a result, the Commission required the Claimant to repay the benefits that he had continued to receive after he left his part-time employment.

[3] The Claimant disagreed that he had voluntarily left his employment and disagreed that he should have to repay benefits that were calculated based on his higher earnings in his previous full-time employment. When he requested a reconsideration of the Commission's decision, the Commission maintained the original decision. The Claimant appealed to the General Division of the Social Security Tribunal but the General Division dismissed his appeal. The Claimant now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. He has not identified any error that the General Division may have made, and I have not discovered any evidence that the General Division may have overlooked or misunderstood.

### ISSUES

[5] Is there an arguable case that the General Division made an error of law?

[6] Is there an arguable case that the General Division overlooked or misunderstood any evidence?

## ANALYSIS

[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 based 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 made an error of law?

[10] One of the Claimant's stated concerns is that he should not be required to repay benefits that were calculated using the earnings of his full-time job. In this case, the Claimant's benefit period was originally established based on his earnings from a full-time job that he had lost through no fault of his own. During the benefit period from that claim, the Claimant took on a part-time job. It was only when he left that employment, that the Commission found that he had voluntarily left without just cause.

[11] However, section 30(1) of the *Employment Insurance Act* (EI Act) disqualifies claimants from benefits if they have lost *any* employment because of their misconduct or because they

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

voluntarily left *any* employment without just cause under section 29(c). Section 30(2) of the EI Act applies the disqualification to *each week* of the claimant's benefit period although a claimant is not disqualified from those benefits that he or she received before the disqualifying event, according to section 30(3).

[12] Section 30(7) of the EI Act makes it clear that a claimant may be disqualified regardless of whether misconduct or voluntary leaving without just cause was the reason the claimant lost the last employment that he or she held before applying for benefits.

[13] The effect of these various provisions is that the Claimant is disqualified from receiving any benefits from the point that he left the part-time job until the end of the benefit period that was already established using the first full-time job. Regardless of which earnings were used to calculate the Claimant's benefits originally, any benefits that the Commission paid to the Claimant after the disqualifying event (voluntarily leaving the part-time job without just cause) are properly considered to be an overpayment because the Claimant should not have received them in the first place.

[14] Section 43 of the EI Act states that a claimant is liable to repay an amount paid by the Commission to the claimant as benefits. Section 44 states that a person who receives a benefit payment to which he or she is not entitled must return the amount of the payment.

[15] Both the Commission and the General Division applied the legislation as it is written. The legislation's meaning is plain, as noted by the General Division[2] and the General Division has no jurisdiction to make a decision that does not follow the legislation. There is no arguable case that the General Division erred in law under section 58(1)(b) of the DESD Act, in its interpretation of the relevant legislation.

**Issue 2: Is there an arguable case that the General Division overlooked or misunderstood any evidence?**

[16] The Claimant argues that he did not intend to leave his employment. According to the employer's statement to the Commission, the Claimant took a leave of absence and left the country, giving his employer a date that he expected to return. The employer also said that the

[2] General Division decision at para 20.

Claimant did not contact the employer until a month, or month and a half, after the date that he was expected back. The Claimant confirmed that he came back to Canada but did not attempt to contact his employer for another month, at which time the employer told him that he had been replaced.

[17] The General Division acknowledged the Claimant's statement that it had not been his intention to quit, but the General Division also noted that, by the Claimant's own admission, he delayed contacting his employer because he was looking for more appropriate work. The General Division also referred to the Claimant's other explanation that he had been too sick to go back to his employer, but it gave this explanation little weight because the Claimant had declared himself to be ready, willing, and capable of working in his claim reports.

[18] The General Division weighed this evidence and concluded that the Claimant "initiated the end of his employment by his delay in contacting his employer."[3] The General Division further found that the Claimant did not have just cause for leaving because he had reasonable alternatives to leaving; he could have contacted his employer and returned to work while searching for more suitable employment or he could have requested an extended leave.

[19] The Claimant may disagree with the General Division's conclusion, but he has not pointed to any evidence that the General Division may have ignored or misunderstood. Simply disagreeing with the General Division's findings does not disclose a valid ground of appeal under section 58(1) of the DESD Act.[4] I am not allowed to reweigh the evidence that the General Division heard to reach a different conclusion.[5]

[20] The Federal Court in *Karadeolian v Canada (Attorney General)*,[6] noted that leave to appeal may still be granted where the General Division arguably overlooked or misunderstood key evidence, even if the appellant has not properly identified such an error under the grounds of appeal. I have not been able to discover an arguable case in relation to any other evidence that may have been overlooked or misunderstood evidence.

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[3] General Division decision at para 12.
[4] *Griffin v Canada (Attorney General)*, 2016 FC 874.
[5] *Rouleau v Canada (Attorney General)*, 2017 FC 534.
[6] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

[21] Therefore, 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.

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

**CONCLUSION**

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

Stephen Bergen
Member, Appeal Division

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| REPRESENTATIVE: | K. G., self-represented |