



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v Canada Employment Insurance Commission*, 2019 SST 173

Tribunal File Number: AD-19-56

BETWEEN:

A. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: March 6, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] A. A. (Claimant) was receiving regular Employment Insurance (EI) benefits when, in August 2016, he accepted a position as a X and X. Just a few days later, however, he announced to his new employer that he had to return to his home country in Africa because his father had died. After learning of this, the Canada Employment Insurance Commission (Commission) concluded that the Claimant was disqualified from receiving any further EI benefits because he had voluntarily left his job without just cause.

[3] The Claimant challenged the Commission's 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. In short, the General Division concluded that the Claimant had good reasons for leaving his job, but that they did not amount to just cause, as required by the *Employment Insurance Act* (EI Act). Indeed, the General Division identified several reasonable alternatives that the Claimant could have pursued rather than leaving his job.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but he requires leave (or permission) to appeal for the file to move forward. Unfortunately for the Claimant, I have concluded that his appeal has no reasonable chance of success. As a result, leave to appeal must be denied.

ISSUES

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

- a) Has the Claimant raised an arguable ground on which the appeal might succeed?
- b) Is there an arguable case that the General Division misinterpreted or failed to properly consider relevant evidence?

ANALYSIS

The Appeal Division's Legal Framework

[6] 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 recognized errors (grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). As a result, the Appeal Division can intervene in a case only if 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.

[7] 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.¹ 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?²

Issue 1: Has the Claimant raised an arguable ground on which the appeal might succeed?

[8] No, the Claimant has not raised an arguable ground on which the appeal might succeed.

[9] Under section 30 of the EI Act, claimants are disqualified from receiving benefits if they voluntarily left their job without just cause. To establish just cause, claimants must prove, on a balance of probabilities, that they had no reasonable alternative but to quit.³ As part of the

¹ DESD Act, s 58(2).

² *Osj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

³ *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

assessment the Tribunal makes in cases such as this one, the Tribunal must consider all of the relevant circumstances, including those listed under section 29(c) of the EI Act.

[10] In this particular case, the Claimant told his employer that he was leaving because he had to return to his home country following the death of his father. The employer seemed open to having the Claimant return to work once things had been settled, but the Claimant was unable to commit to a return date and recognized that his employer was within its rights to replace him.⁴

[11] For various reasons, however, the Claimant never returned to his home country. He did not ask for his old job back, either. He did, however, argue that he had several reasons for not doing so: he needed to care for an ailing family member, he was not properly trained at work, he was asked to do duties that were outside of his job description, and his work environment was negative and unwelcoming.

[12] Some of the arguments raised by the Claimant might not have been relevant to the General Division's decision since they were not among those that he gave to his employer for quitting.⁵ Nevertheless, the General Division considered all of the Claimant's arguments but concluded that they did not amount to just cause under the EI Act. Instead, the General Division found that the Claimant had reasonable alternatives to leaving his job.

[13] For his appeal to succeed at the Appeal Division, the Claimant was informed that he would have to establish that the General Division committed one or more of the recognized errors listed above.⁶ In addition, the request for leave to appeal asked the Claimant to give specific examples of how the General Division made at least one of those errors.⁷

[14] On his request for leave to appeal, the Claimant ticked a box alleging that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.⁸ The principles of natural justice generally focus on the process before the General Division, including whether the parties had a fair and reasonable opportunity to

⁴ GD3-50 to 51.

⁵ *Canada (Attorney General) v Lamonde*, 2006 FCA 44 at para 8.

⁶ See the cover letter dated January 14, 2019, that accompanied the General Division decision.

⁷ AD1-3.

⁸ AD1-3.

present their case and have it decided by an impartial decision-maker. However, I am unable to see a connection between the principles of natural justice and any of the allegations set out in the Claimant's request for leave to appeal.

[15] Indeed, regardless of the box that the Claimant ticked on his request for leave to appeal, this document does little more than simply repeat points that the General Division has already considered. As discussed above, the Appeal Division's role is limited: The Appeal Division is not an opportunity for the Claimant to reargue his case in hopes of getting a different result.⁹

[16] While the Claimant has expressed why he dislikes the General Division decision, he has not pointed to any relevant error that the General Division might have made, and none are immediately obvious to me. As a result, I cannot conclude that the Claimant has raised an arguable ground on which the appeal might succeed.

Issue 2: Is there an arguable case that the General Division misinterpreted or failed to properly consider relevant evidence?

[17] 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 to assess whether the General Division might have misinterpreted or failed to properly consider relevant evidence.¹⁰ If this is the case, then leave to appeal should normally be granted regardless of any technical problems in the request for leave to appeal.

[18] After reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither misinterpreted nor failed to properly consider any relevant evidence.

⁹ *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.

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

CONCLUSION

[19] I sympathize greatly with the difficult circumstances in which the Claimant finds himself. Having concluded that the Claimant's appeal has no reasonable chance of success, however, I have no choice but to refuse his request for leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	A. A., self-represented
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