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

Citation: *A. Y. v Canada Employment Insurance Commission and X*, 2019 SST 167

Tribunal File Number: AD-18-753

BETWEEN:

A. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: February 27, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. Y., applied for Employment Insurance (EI) benefits. He lost his employment but maintains that it was not due to misconduct. The Respondent, the Canada Employment Insurance Commission (Commission), refused his claim for EI benefits because it found that the Applicant lost his employment because of his own misconduct according to the *Employment Insurance Act*. An applicant for EI benefits is disqualified from receiving any benefits if they lose their employment because of their own misconduct.

[3] The Applicant filed an appeal to the General Division of the Social Security Tribunal of Canada. The General Division found that the Applicant's conduct was the direct cause of his dismissal and that he lost his employment because of misconduct, in particular unacceptable customer service and confrontations with co-workers and supervisors.

[4] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He maintains that he was falsely accused and that the Added Party (employer) set up the situation to get rid of staff without paying severance.

[5] I find that the appeal does not have a reasonable chance of success because the Applicant simply repeats arguments made before the General Division and does not raise any reviewable errors.

ISSUES

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?

[7] Is there an arguable case that the General Division decision is based on serious errors in the findings of fact because the General Division failed to take into account evidence in the appeal record?

ANALYSIS

[8] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can move forward only if leave is granted.[1]

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground on which the proposed appeal might succeed?[2]

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error.[4] The only reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[11] The Applicant submits that the General Division failed to consider his specific circumstances. He argues that the employer did not attend the General Division hearing and did not give evidence under oath. On the other hand, he testified at the hearing along with another employee. The Applicant alleges a breach of natural justice because the General Division accepted the employer's documentary evidence instead of sworn testimony.

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[1] *Department of Employment and Social Development Act* (DESD Act), ss 56(1) and 58(3).
[2] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.
[3] DESD Act, s 58(2).
[4] DESD Act, s 58(1).

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?

[12] I find that there is no arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction.

[13] "Natural justice" refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. It is settled law that an applicant has the right to expect a fair hearing with a full opportunity to present their case before an impartial decision-maker.[5]

[14] The employer did not participate in the teleconference hearing at the General Division, although it had been notified of the hearing. The absence of a party is not, in itself, a breach of natural justice.

[15] The Applicant argues that the General Division should have required the employer to give sworn evidence and that, when the employer did not attend the hearing, the General Division could not accept the employer's documentary evidence over the sworn testimony of witnesses.

[16] The Applicant's contentions are incorrect, and his allegations do not substantiate a breach of natural justice. The General Division has the jurisdiction to assess and weigh all the evidence, documentary and oral.

[17] The Applicant had a full opportunity to present his case before the General Division. He filed documents and attended the hearing with an additional witness. He argues that he "rejected all of the allegations against [him]."[6] He argues that the General Division had to accept all of his evidence because the employer did not attend the hearing.

[18] Natural justice does not mean that oral evidence given at the hearing must be accepted or that it has to be weighed more favourably than documentary evidence is. Natural justice requires that a party have a right to be heard and to know the case against them.

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[5] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 22.
[6] Leave to Appeal Application at page AD1-1 para 1.

[19] The Applicant had the right to be heard and he was heard, in writing and orally. He also knew the case against him: he had the Respondent's file and the employer's documentary evidence to review long before the hearing date.

[20] There was no material evidence supporting the Applicant's argument that the General Division member breached any principles of natural justice. There is no error relating to natural justice that is apparent on the face of the record, either.

[21] The appeal does not have a reasonable chance of success based on this ground.

Issue 2: Is there an arguable case that the General Division decision is based on serious errors in the findings of fact because it failed to take into account evidence in the appeal record?

[22] The General Division did not base its decision on serious errors in the findings of fact.

[23] The General Division took into account the evidence in the appeal record, which included documentary evidence, the Applicant's testimony, and his witness's testimony at the hearing. However, the General Division was satisfied that the Applicant lost his employment because of misconduct on his part.

[24] The Applicant argues that there were other reasons for his loss of employment and that he did not act as the employer alleged. He maintains that he did not act as described in the warning letters or the dismissal letter. He submits that the warnings and the employer's other conduct were calculated to make drivers quit so that the employer would not have to pay them severance. He points to documents showing that the employer paid severance to settle the complaint he filed with the Employment Standards Branch and to his written responses to the warning letters to support his allegation that the General Division based its decision on serious errors in the findings of fact.

[25] The General Division considered the Applicant's arguments and the evidence on file (which included the Employment Standards Branch letter and his written responses). It considered the testimony given at the hearing and each of the reasons the Applicant advanced as an explanation for his eventual dismissal by the employer. The General Division's decision includes an analysis of the Applicant's arguments. Ultimately, the General Division concluded

that the Applicant had been terminated for breaches of the Employee Handbook, including being argumentative and insubordinate with supervisors and providing unacceptable customer service.[7] It also found that the Applicant's actions constituted misconduct.[8]

[26] The Applicant's reasons for appeal do not have a reasonable chance of success. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[27] I have read and considered the General Division decision and the documentary record. My review does not indicate that the General Division either overlooked or misconstrued important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it erred in law in coming to its decision.

[28] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[29] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	A. Y., self-represented

[7] General Division decision at paras 13 to 23.
[8] *Ibid.* at paras 25 to 31.