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

Citation: *G. G. v Canada Employment Insurance Commissions*, 2019 SST 203

Tribunal File Number: AD-18-391

BETWEEN:

G. G.

Appellant

and

Canada Employment Insurance Commissions

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: March 14, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, G. G., applied for Employment Insurance (EI) benefits after she left her employment as a X for a X, in July 2017.

[3] The Respondent, the Canada Employment Insurance Commission, determined that the Appellant voluntarily left her employment without just cause and denied her request for benefits.

[4] The Appellant appealed the Respondent's decision to the General Division of the Social Security Tribunal of Canada. The General Division found that the Appellant had experienced harassment in the workplace and had voluntarily left her employment but that she did not have just cause for leaving her employment because alternatives existed to her quitting.

[5] The Appellant appealed to the Appeal Division and submitted that the General Division had based its decision on errors of law and serious errors in its findings of fact. Leave to appeal was granted because the General Division may have erred in law or based its decision on an error of mixed fact and law or a serious error in the finding of facts.

[6] The General Division did not make any reviewable errors. The appeal is dismissed.

ISSUES

[7] Did the General Division err in law in making its decision by misinterpreting or misapplying the law, specifically, by failing to consider all of the circumstances described in section 29(c) of the *Employment Insurance Act* (EI Act)?

[8] Did the General Division make a serious error in its findings of fact by concluding that the Appellant did not have just cause for voluntarily leaving her employment?

PRELIMINARY MATTER

[9] At the outset of the appeal hearing, the Appellant stated that she left her position voluntarily, although under pressure, and was not appealing the General Division's finding that she quit her job at the X. She is appealing only one part of the General Division's decision: the part related to having just cause for leaving her employment when she did.

[10] The Appellant maintains that she was harassed and bullied by her employer into leaving her position. She submits that because of the employer's conduct, she had no reasonable alternative to leaving when she did and she had just cause for leaving.

ANALYSIS

[11] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, 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.[1] Because the General Division may have erred in law or made an error of mixed fact and law when making its decision, the Appeal Division granted leave to appeal.

[12] The Appeal Division does not owe any deference to the General Division on questions of natural justice, jurisdiction, or law.[2] In addition, the Appeal Division may find an error in law whether or not it appears on the face of the record.[3]

[13] When a party alleges that the General Division made an erroneous finding of fact, the decision must be based on that finding of fact. In addition, it is not enough that the finding is **just** erroneous; it must have been made in a perverse or capricious manner or without regard for the material before it, also.[4]

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[1] *Department of Employment and Social Development Act* (DESD Act), s 58(1).
[2] *Canada (Attorney General) v Paradis* and *Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19.
[3] DESD Act, s 58(1)(b).
[4] *Ibid.*, s 58(1)(a).

[14] Where an error of mixed fact and law made by the General Division discloses an extricable legal issue, the Appeal Division may intervene under section 58(1) of the *Department of Employment and Social Development Act*.[5]

[15] The appeal before the General Division turned on the question of whether the Appellant had just cause for leaving her position when she did. This is a question of mixed fact and law. Because legislative provisions and jurisprudence define the legal test for just cause, the mixed question on appeal here discloses distinct legal issues in which the Appeal Division may intervene.

Issue 1: Did the General Division err in law by misinterpreting or misapplying the law, specifically, by failing to consider all of the circumstances described in section 29(c) of the EI Act?

[16] The General Division did not err in law by misinterpreting or misapplying the applicable legislative provisions.

[17] The legal test to determine just cause for leaving an employment is whether, having regard to all the circumstances and on a balance of probabilities, the claimant had no reasonable alternative to leaving.[6]

[18] The General Division referred to section 29 of the EI Act and binding Federal Court of Appeal decisions.[7] After reviewing the evidence, the General Division found that the Appellant experienced harassment in the workplace.[8] However, it concluded that she "did not have just cause for leaving her employment because alternatives existed to her quitting when she did."[9]

[19] The Appellant submits that the General Division failed to consider all of the circumstances described in the EI Act as possibly giving rise to just cause. She submits that the General Division failed to consider, in particular, that her employer had imposed significant changes in her work duties by requiring her to work in the evening.

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[5] *Garvey v Canada (Attorney General)*, 2018 FCA 118.
[6] EI Act, s 29; *Canada (Attorney General) v White*, 2011 FCA 190; *Canada (Attorney General) v Imran*, 2008 FCA 17.
[7] General Division decision at paras 10 to 12.
[8] *Ibid*. at paras 13 to 20.
[9] *Ibid*. at para 20.

[20] The Respondent submits that the General Division did consider the changes to the Appellant's work schedule that her employer had imposed but found that there were reasonable alternatives to her leaving her job when she did.

[21] The General Division did consider the circumstances surrounding the employer's requirement that the Appellant work in the evenings. It found that, while the Appellant "did have a reasonable belief that she would not have to work evenings, [the General Division] cannot automatically conclude that she had just cause for leaving."[10] The General Division noted that the Appellant gave many reasons for leaving her employment when she did and that it "must consider whether these reasons, individually or as a whole, meet the legal test."[11]

[22] The General Division specifically referred to section 29(c)(i) harassment, 29(c)(iv) working conditions constituting a danger to health, 29(c)(v) obligation to care for a child, 29(c)(xiii) undue pressure from the employer to leave, and "any other circumstances."[12] Although it did not refer specifically to section 29(c)(ix), which refers to a significant change in work duties, the General Division clearly considered the employer's requirement that the Appellant work in the evenings. Moreover, the General Division had regard to all the circumstances and applied the legal test and legislative provisions correctly.

[23] The General Division did not err in law by misinterpreting or misapplying the applicable legislative provisions.

Issue 2: Did the General Division make a serious error in its findings of fact by concluding that the Appellant did not have just cause for voluntarily leaving her employment?

[24] The General Division did not base 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.

[25] The Appellant submits that the General Division found that there was harassment in the workplace and, therefore, should have approved her for EI benefits. She argues that the employer

[10] General Division decision at para 32.
[11] *Ibid*.
[12] *Ibid*. at para 31.

required her to work evenings and that she tried to do so for one month, but the situation was unmanageable and took a toll on her health, so she had no alternative to leaving.

[26] The Respondent submits that a finding that the Appellant experienced harassment in the workplace alone is not enough to meet the criteria for approval for EI benefits. In addition, the Appellant had to establish, with evidence, that there were no other reasonable alternatives to her leaving when she did.

[27] The General Division identified reasonable alternatives to the Appellant leaving her position when she did. She could have requested medical leave or obtained a medical note;[13] asked for a leave of absence or a transfer; looked for other employment before quitting; or inquired about the requirements to establish an EI benefit period.[14] The General Division arrived at these findings of fact after reviewing the evidence in the appeal record and considering the Appellant's testimony at the hearing.

[28] At the appeal hearing, the Appellant stated that the General Division did not understand that she was not in a good state of mind when she left her position because the employer had "broken" her, so "there were many options at the time that I could have taken, but I was not in the right mind at the time."

[29] The General Division noted that it sympathized with the Appellant's position, but the law requires sufficient proof that the Appellant had no reasonable alternatives to leaving.[15] The General Division correctly concluded that because there were reasonable alternatives to leaving, the Appellant was disqualified from receiving EI benefits.

[30] The General Division considered the Appellant's arguments and the evidence on file. It did not overlook or misconstrue any important evidence. The General Division did not make any serious errors in its findings of fact or base its decision on such errors.

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[13] General Division decision at para 20.
[14] *Ibid*. at para 33.
[15] *Ibid*. at paras 6 and 34.

CONCLUSION

[31] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division

HEARD ON:	January 31, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. G., self-represented Isabelle Thiffault, Representative for the Respondent