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

Citation: *B. G. v Canada Employment Insurance Commission*, 2019 SST 199

Tribunal File Number: AD-19-57

BETWEEN:

B. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: March 13, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] For many years, B. G. (Claimant), worked in the X department at her local hospital. When these services were privatized, however, she came into contact with a new employee who she says bullied her to the point where she had no choice but to quit after just a couple of days. Some months later, she applied for Employment Insurance (EI) benefits, which were initially paid to her, but the Canada Employment Insurance Commission (Commission) later decided that she was disqualified from receiving EI benefits because she had voluntarily left her job with the private company without just cause. As a result of this decision, the Claimant was asked to repay the EI benefits that she had already received.

[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 her appeal. In short, the General Division concluded that the Claimant was the victim of serious harassment in the workplace, but that she failed to make attempts to resolve this issue before quitting her job. As a result, the Claimant did not have just cause for leaving her job, as required by the *Employment Insurance Act* (EI Act).

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

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: The Claimant has not raised an arguable ground on which the appeal might succeed

[8] 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

[1] DESD Act, s 58(2).
[2] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

balance of probabilities, that they had no reasonable alternative but to quit.[3] As part of this assessment, the Tribunal must consider all of the relevant circumstances, including those listed under section 29(c) of the EI Act.

[9] In this particular case, when the Claimant first applied for EI benefits, she did not disclose that she had worked for a private X company. She did not think that it was necessary because she was just in training and had not yet returned all of the paperwork necessary to become employed by the company.

[10] Nevertheless, the Commission launched an investigation after the private company provided it with a Record of Employment saying that the Claimant had quit her job. As part of its investigation, the Commission learned that the Claimant told the private company that she was quitting because of problems with her husband's health. Nevertheless, she told the Commission that the real reason she had quit was because she was being bullied by a co-worker.[4]

[11] In its decision, the General Division accepted that the Claimant exeperienced harassment in the workplace, as described in section 29(c)(i) of the EI Act. However, it also concluded—based on a binding decision from the Federal Court of Appeal[5]—that the Claimant had an obligation to try and resolve workplace conflicts, but that she made no attempt to do so. The Claimant has not challenged these key findings in any way.

[12] Instead, the Claimant's request for leave to appeal and her response to the Tribunal's request for further information simply repeat many of the points that the General Division has already considered.[6] As discussed above, the Appeal Division's role is limited: The Appeal Division is not a place for the Claimant to reargue her case in hopes of getting a different result.[7]

[13] While the Claimant continues to argue why she had good reasons for leaving her job when she did, she has not pointed to any relevant error that the General Division might have

---

[3] *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[4] GD3-46.
[5] *Canada (Attorney General) v White*, 2011 FCA 190 at para 5.
[6] AD1; AD4. See also the Tribunal's letter dated February 11, 2019.
[7] *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.

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: There is no arguable case that the General Division misinterpreted or failed to properly consider relevant evidence

[14] 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.[8] 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.

[15] 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.

CONCLUSION

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

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	B. G., self-represented

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