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

Citation: *C. A. v Canada Employment Insurance Commission*, 2019 SST 302

Tribunal File Number: AD-19-30

BETWEEN:

C. 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 25, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] C. A. is the Applicant in this case. For many years, she worked in X at a X. One day in November 2017, she was volunteering at work to help decorate for the holidays, but says that she fell from a ladder and injured herself. Over the next few months, she developed a strained relationship with her employer who seemed to doubt the seriousness of her injuries, and even whether she had had an accident at all. The Applicant's doctor said that she was fit to return to work on April 5, 2018, but the employer suspended the Applicant for a month because it did not accept her reasons for being away.

[3] The Applicant's first day back at work did not go well. She had another confrontation with her employer, felt unwell, and returned home before the end of her shift. The Applicant's employer insisted that the Applicant attend a meeting the next day. The Applicant quit instead.

[4] The Applicant then applied for Employment Insurance (EI) benefits, but the Canada Employment Insurance Commission (Commission) decided that she was disqualified from receiving those benefits because she had voluntarily left her job without just cause.

[5] The Applicant challenged the Commission's decision, but the Commission maintained it on reconsideration. The Applicant then appealed the Commission's decision to the Tribunal's General Division, but it dismissed her appeal. In short, the General Division concluded that, rather than quitting her job, it would have been reasonable for the Applicant to attend the meeting with her employer. Alternatively, she could have tried to find another job before quitting. As a result, the Applicant did not have just cause for leaving her job, as required by the *Employment Insurance Act* (EI Act).

[6] The Applicant 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 Applicant, I have concluded that her appeal has no reasonable chance of success. As a result, leave to appeal must be refused.

ISSUES

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

a) Has the Applicant 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

[8] 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 three 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.

[9] The Appeal Division's limited role means that it does not normally consider new evidence.[1] Instead, it focuses on whether the General Division made an error based on the material that it had in front of it. For that reason, I have not considered any of the new evidence that the Applicant filed with the Appeal Division.[2]

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[1] *Parchment v Canada (Attorney General)*, 2017 FC 354 at para 23; *Marcia v Canada (Attorney General)*, 2016 FC 1367 at paras 20 and 34.
[2] AD1-1; AD1-2; AD1-6 to 10; AD1A-4.

[10] 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.[3] 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?[4]

Issue 1: The Applicant has not raised an arguable ground on which the appeal might succeed

[11] 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.[5] 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.

[12] In this case, the Applicant's request for leave to appeal did not clearly state what error she alleged the General Division to have made. As a result, the Tribunal asked her to provide more details.[6] In response, the Applicant alleged that the General Division decision was based on an error of fact, though the specific fact at issue remains a bit unclear.

[13] In its decision, the General Division understood that there was a breakdown of trust between the Applicant and her employer. It accepted that the Applicant had met with her employer twice[7] and that the meeting proposed for May 4, 2018, would have been the third meeting regarding her return to work. The General Division also acknowledged the Applicant's feeling that there was no point attending the third meeting and her explanation as to why she did not request a gradual return to work or try to find another job before leaving her existing one.

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[3] DESD Act, s 58(2).
[4] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[5] *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[6] See the Tribunal's letter dated February 8, 2019.
[7] General Division decision at paras 11 and 15.

[14] Nevertheless, the General Division concluded that the Applicant had reasonable alternatives to leaving her job when she did: she could have met with her employer to try and resolve the situation or she could have looked for other work before leaving her job at the long-term care facility. The Federal Court of Appeal has recognized that these are reasonable alternatives in most cases.[8]

[15] The Applicant has not challenged the General Division's key findings in any serious way. Instead, her 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.[9]

[16] The Appeal Division has no power to intervene in a case because the General Division should have balanced certain factors differently.[10] The Appeal Division's role is limited: it is not a place for the Applicant to reargue her case in hopes of getting a different result.[11] In addition, the Appeal Division has no power to intervene just because the Applicant disagrees with the way that the General Division applied established legal principles to the facts of her case.[12]

[17] For all of these reasons, I concluded that the Applicant has not 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

[18] 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.[13] 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.

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[8] *Canada (Attorney General) v White*, 2011 FCA 190 at para 5.
[9] AD1; AD1C.
[10] DESD Act, s 58(1).
[11] *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.
[12] *Quadir v Canada (Attorney General)*, 2018 FCA 21 at para 9; *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 7.
[13] *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

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

CONCLUSION

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

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	C. A., self-represented