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

Citation: *I. C. v Canada Employment Insurance Commission*, 2019 SST 294

Tribunal File Number: AD-19-79

BETWEEN:

**I. C.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

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Leave to Appeal Decision by: Jude Samson

Date of Decision: March 20, 2019

Canada

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] I. C. (Claimant) applied for Employment Insurance (EI) benefits, but the Canada Employment Insurance Commission (Commission) disqualified him from receiving those benefits because he had voluntarily left his employment without just cause, as defined under the *Employment Insurance Act* (EI Act).

[3] In short, the Claimant argued that he urgently needed to buy his first home. He was concerned about his age and the soaring cost of real estate in British Columbia. He began searching for homes near his work, but was unable to find anything that was in his price range. In the end, he found a home on Vancouver Island and decided to seize the opportunity while house prices there were still affordable. However, the Claimant then decided to leave his job in the Fraser Valley, since it was impossible to commute there from Vancouver Island.

[4] The Claimant challenged the Commission's decision denying his EI benefits to the Tribunal's General Division, but the General Division dismissed his appeal. 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 and that leave to appeal must therefore be refused.

### ISSUES

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

a) Was the Claimant's request for leave to appeal filed late?

b) Should the Claimant be granted leave to appeal?

## ANALYSIS

### Issue 1: Was the Claimant's request for leave to appeal filed late?

[6] In its letter dated January 28, 2019, the Tribunal notified the Claimant that his request for leave to appeal appeared to be late. Upon closer review, however, I have concluded that the Claimant filed his request for leave to appeal on time.

[7] Applications requesting leave to appeal are due within 30 days of when claimants receive the General Division decision.[1] In this case, the General Division decision is dated October 17, 2018, but the Claimant says that he first received the decision by email on December 28, 2018.[2] The Tribunal initially sent the General Division decision to the Claimant by mail, but he says that mail to his address was delayed because of a strike at Canada Post.

[8] Indeed, the Tribunal did email a copy of the General Division decision to the Claimant on December 28, 2018, and I accept that date, therefore, as the date when he first received the decision. As a result, his request for leave to appeal, which the Tribunal received on January 25, 2019, was filed on time.

### Issue 2: Should the Claimant be granted leave to appeal?

[9] No, the Claimant has not met the legal test for obtaining leave to appeal.

[10] 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

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[1] *Department of Employment and Social Development Act*, s 57(1)(a).
[2] AD1B-8.

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.

[11] 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]

[12] In this particular case, the General Division proceeding focused on sections 29 and 30 of the EI Act, which disqualifies claimants from receiving EI benefits if they voluntarily leave a job without just cause. To establish just cause, claimants must prove, on a balance of probabilities, that they had no reasonable alternative but to leave their job.[5] As part of the assessment that it makes in cases like this one, the Tribunal must consider all of the relevant circumstances, including those listed under section 29(c) of the EI Act.

[13] Among the relevant circumstances in his case, the Claimant argues that the General Division should have considered the right to housing and the realities of British Columbia's housing market. Instead, however, the General Division concluded that the Claimant's personal and financial reasons for buying a home could not be considered just cause within the meaning of the EI Act.

[14] In addition, the General Division identified a reasonable alternative that the Claimant could have pursued rather than quitting his job: the Claimant could have kept his job in the Fraser Valley until he had found a new job on Vancouver Island, even if this meant finding some temporary accommodation in the Fraser Valley. Indeed, the Claimant told the General Division member during the hearing that he might return to his old job in the Fraser Valley if it took him too long to find work on Vancouver Island.[6]

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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 also GD3-26.

[15] Parenthetically, I note that, in this respect, the General Division decision is consistent with decisions from the Federal Court of Appeal in which it was held that claimants for EI benefits normally need to make efforts to find a new job before leaving their existing job.[7]

[16] While the Claimant challenges the General Division's factual findings, he has not pointed to any specific evidence that the General Division misinterpreted or failed to properly consider. I recognize that erroneous findings of fact are one of the three grounds that can justify the Appeal Division's intervention in a case; however, the erroneous finding must be made in a perverse or capricious manner or without regard for the material before it.[8] In my view, the Claimant has not raised an arguable case that the General Division decision contains an error that might rise to this level.

[17] In its decision, the General Division also recognized that the Claimant had many good and valid reasons for wanting to buy a home, but concluded that, as a matter of law, those reasons could not be considered just cause within the meaning of the EI Act. On this point, the General Division relied on *Canada (Attorney General) v Imran*[9]—a binding decision from the Federal Court of Appeal—though there are many other decisions that the General Division could have also cited in support of its conclusion.[10] While the Claimant might not like the conclusion reached in these cases, the Tribunal has no choice but to follow them.

[18] Finally, the Claimant alleges that the General Division member was out of touch with British Columbia's housing crisis and that his decision was a foregone conclusion. While the Claimant may feel this way, he has not pointed to any evidence in support of these serious allegations, nor was I able to substantiate his concerns based on the Tribunal's record. Indeed, the General Division hearing was conducted in a friendly and professional manner and, at the end the hearing, the Claimant thanked the General Division member for a detailed and friendly

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[7] *Ibid* at para 5.
[8] DESD Act, s 58(1)(c).
[9] *Canada (Attorney General) v Imran*, 2008 FCA 17.
[10] *Canada (Attorney General) v Campeau*, 2006 FCA 376 at para 21; *Canada (Attorney General) v Langevin*, 2011 FCA 163 at para 5; *Canada (Attorney General) v Langlois*, 2008 FCA 18 at para 31; *Canada Employment Insurance Commission v C. B.*, 2017 SSTADEI 18 at paras 9-11.

conversation. While I acknowledge that this argument raises natural justice concerns, I concluded that it lacks the evidence needed to have any reasonable chance of success.

[19] Overall, therefore, I find that the Claimant's arguments largely repeat points that the General Division has already considered. The Appeal Division has no power to intervene in a case because certain factors should have been balanced differently.[11] The Appeal Division's role is limited: it is not a place for the Claimant to reargue his case in hopes of getting a different result.[12] In addition, the Appeal Division has no power to intervene just because the Claimant disagrees with the way that the General Division applied established legal principles to the facts of his case.[13]

[20] For all of these reasons, I concluded that the Claimant has not raised an arguable case on appeal.

[21] Regardless of this conclusion, I am mindful of Federal Court decisions in which the Appeal Division has been told to go beyond the four corners of the Claimant's request for leave to appeal and to assess whether the General Division might have misinterpreted or failed to properly consider relevant evidence.[14] After reviewing the documentary record, listening to the recording of the General Division 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

[22] I sympathize with the Claimant's circumstances and understand his disappointment. He argues that the EI Act should be changed to accommodate situations like his. That may be true, but that is something that only Parliament can do. In the meantime, the truth remains that the Claimant had housing and a job in the Fraser Valley, and that he gave them both up so that he

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

could buy his first home. His desire to be a homeowner may be entirely legitimate and justified, but the cost of doing so is not one that he can share with other contributors to the EI scheme.

[23] Having concluded that the Claimant's appeal has no reasonable chance of success, I have no choice but to refuse his request for leave to appeal.

Jude Samson
Member, Appeal Division

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| REPRESENTATIVE: | I. C., self-represented |