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

[TRANSLATION]

Citation: *D. G. v Canada Employment Insurance Commission*, 2019 SST 319

Tribunal File Number: AD-18-757

BETWEEN:

D. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 5, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, D. G. (Claimant), went to the worksite to resume working because he was returning to work on a gradual basis as required by his insurer. The superintendent ordered him to leave the worksite or else the superintendent would call the police. The Appellant withdrew because of the supervisor's threats. The Employment Insurance Commission (Commission) considered that the Claimant had voluntarily left his employment and that he did not have just cause for doing so because he had failed to demonstrate that he had no reasonable alternative to voluntarily leaving his employment. The Claimant requested a reconsideration of the Commission's decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant could not return to work without a medical recommendation. Despite numerous legal proceedings, his familial difficulties, and his fears regarding police officers, nothing prevented the Claimant from consulting a physician to establish his ability to return to work, to extend his sick leave with his employer, or to satisfy the insurer's requirements by consulting the professionals the insurer required. The General Division found that the Claimant had not demonstrated that he had no reasonable alternative to leaving his employment.

[4] The Tribunal granted leave to appeal. The Claimant is essentially arguing that he did not leave his employment voluntarily. He argues that the General Division made its decision without regard for the material before it.

[5] The Tribunal must decide whether the General Division 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 and whether it erred in finding that the Claimant had left his employment without just cause under the *Employment Insurance Act* (EI Act).

[6] The Tribunal dismisses the Claimant's appeal.

ISSUES

[7] Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it?

[8] Did the General Division err in finding that the Claimant had left his employment without just cause under the EI Act?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).[1]

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

Issues:

Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it?

Did the General Division err in finding that the Claimant had left his employment without just cause under the EI Act?

[12] The Claimant's appeal is without merit.

[13] The Claimant argues that he did not leave his employment voluntarily. He argues that the General Division made its decision without regard for the material before it. The Claimant also submits that, contrary to the General Division's findings, the insurer forced him to gradually return to work and that there was never any question of obtaining a medical note beforehand.

[14] The evidence shows that the Claimant's doctor prescribed a leave of absence. As a result, he received wage-loss insurance from his employer. The insurer then offered the Claimant two options: a gradual return to work according to the terms and conditions negotiated with the employer or an in-depth psychological examination. The Claimant decided to return to work.

[15] However, the Claimant went to the worksite without discussing it with his doctor and without first negotiating the terms and conditions of his return with his employer. The superintendent asked him to X with an X, which the Claimant refused to do. Instead, he chose to tour the worksite to check its safety. The employer therefore instructed him to leave the worksite or else it would call the police. Furthermore, the employer required a medical note in support of his return because the Claimant did not seem fit for a return to work. The Claimant did not contact the insurer after his gradual return to work failed, and he did not obtain a medical note in support of his return. Instead, he chose to leave his employment.[2]

[2] GD3-30, GD3-31.

[16] The issue under appeal before the General Division was whether the Claimant had voluntarily left his employment without just cause under sections 29 and 30 of the EI Act.

[17] It seems clear to the Tribunal that, despite the problems on the employer's worksite, it was the Claimant who terminated his employment. The employer asked him to return to work and present a medical note attesting to his ability to work, which he did not do. The employer therefore did not terminate the Claimant's employment. Moreover, the Claimant did not contact the insurer to inform it of the outcome of his gradual return. He instead chose to leave his employment.

[18] As the General Division rightly highlighted, the Claimant had to show that, having regard to all the circumstances, he had no reasonable alternative to leaving in his case.

[19] The General Division found that the Claimant could have consulted a doctor to establish his ability to work after his employer requested it and in light of the medical certificates attesting to the contrary. He could have discussed the situation with his insurer before leaving his employment or looked for other employment before leaving the employment he had.

[20] The General Division found, based on the evidence, that the Claimant had failed to demonstrate that he had no reasonable alternative to leaving.

[21] The Tribunal is of the view that the General Division did not err when it found, based on the evidence before it, that the Claimant had reasonable alternatives to leaving his employment when he did.

CONCLUSION

[22] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D.~~ominic~~ G.~~ingras~~, Appellant Manon Richardson, Representative for the Respondent