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

Citation: *B. B. v Canada Employment Insurance Commission*, 2019 SST 353

Tribunal File Number: AD-19-218

BETWEEN:

B. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: April 10, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, B. B. (Claimant), applied for Employment Insurance benefits, having accumulated sufficient hours of insurable employment to qualify in the region in which she resides. The Respondent, the Canada Employment Insurance Commission (Commission), accepted her claim but determined that her Canada Pension Plan (CPP) benefit payments were income and that they had to be allocated to weeks of benefits.

[3] The Claimant disagreed with the allocation and she asked the Commission to reconsider. Once the Commission determined that it would not change its original decision, the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed her appeal. Now the Claimant seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success. The Claimant has not raised an arguable case that the General Division ignored or misunderstood any evidence that was relevant to its findings of f act.

ISSUE

[5] Is there an arguable case that 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 evidence of the Claimant's medical expenses and financial need?

ANALYSIS

General principles

[6] The Appeal Division may intervene in a decision of the General Division, only if it can find that the General Division has made one of the types of errors described by the "grounds of

appeal" in s.58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The only grounds of appeal are described below:

> a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
> b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record, or;
> c) 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.

[8] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case.[1]

Is there an arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner, or without regard to the evidence of the Claimant's medical expenses and financial need?

[9] The Claimant has argued that the General Division made an erroneous finding of fact. She explains that she needs the money that the Commission has deducted from her Employment Insurance benefits to pay for medical expenses. I presume that the Claimant believes that the General Division ignored or misunderstood her financial need or the medical reasons behind her financial need.

[10] The Claimant has not argued that the General Division erred in law, however I will briefly summarize the regulations that the General Division was required to follow in making its decision. The General Division correctly identified that the earnings that may be deducted from benefits under section 35(2) of the *Employment Insurance Regulations* (Regulations) includes money paid or payable on a periodic basis on account of a pension (section 35(2)(e))[2], and that the Regulations define "pension" to include a retirement pension under the Canada Pension Plan

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[1] *Canada (Minister of Human Resources Development) v Hogervorst,* 2007 FCA 41*; Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] General Division decision, para. 6

(section 35(1))[3]. The General Division is also correct that pension payments under the CPP may be excluded from earnings (and therefore excluded from allocation), but **only** where the claimant qualified for Employment Insurance benefits on the basis of hours of insurable employment accumulated after the date on which the pension monies become payable and during the period in which the claimant received those payments (section 35(7)(e)(ii)).[4] Otherwise, the periodic CPP payments will be allocated to the period for which they are paid or payable (section 36(14)).[5]

[11] Therefore, the facts of significance to the General Division included the date that the CPP became payable, the number of hours required to qualify for benefits in the Claimant's economic region, and whether the Claimant accumulated at least that number of hours after the date the CPP became payable. The Claimant's evidence was that she became eligible for her CPP pension on August 1, 2018, and received her first payment on August 27, 2018. According to section 7(2)(b) of the EI Act, 420 hours is the required number of hours to qualify for benefits in an economic region in which the regional rate of unemployment is greater than 13%. The Claimant's residence in Newfoundland (but outside of St. John's) is such a region. The Claimant obtained the required 420 hours of insurable employment to establish a claim but, according to the Record of Employment evidence[6], she accumulated only 256 hours after she became eligible for her CPP pension.

[12] I understand that the Claimant was laid off through no fault of her own at a time when she had not yet accumulated 420 hours from the time she became eligible for CPP, and I understand that she believes this is unfair. I also appreciate that she has financial needs owing at least in part to expenses associated with her various medical conditions. However, the General Division could not ignore the evidence that the Claimant had not accumulated 420 hours after August 2019, or the application of the law in such circumstances. The law does not give the General Division the discretion to make a different decision based on the compassionate

[3] *Ibid.*
[4] *Ibid.*, para. 9
[5] *Ibid*., para. 11
[6] GD6-2

considerations raised by the Claimant. Therefore, there can be no arguable case that the General Division made any erroneous finding of fact by failing to consider or understand this evidence.

[13] I also broadened my review of the record to search for any other evidence that the General Division might have missed or misunderstood and which might raise an arguable case that the General Division based its decision on an erroneous finding of fact. This is consistent with the Federal Court's decision in *Karadeolian v Canada (Attorney General)*,[2] in which the court determined that Appeal Division can grant leave to appeal where the General Division has arguably overlooked or misunderstood key evidence, even though the applicant may not have properly identified such an error under the grounds of appeal.

[14] However, I have not discovered any other significant evidence on the record that may have been ignored or misunderstood by the General Division in making any finding of fact. Therefore, there is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act.

[15] There is no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	B. B., Self-represented