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

Citation: *M. T. v Canada Employment Insurance Commission*, 2019 SST 350

Tribunal File Number: AD-19-188

BETWEEN:

M. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: April 9, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. T. (Claimant), decided to start his own business while he was on Employment Insurance benefits. After an investigation of the circumstances, the Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had been self-employed during certain weeks of his claim and that he had been unavailable for other work at the same time. Although the Commission also found that he had knowingly made false statements in connection with his self-employment, it did not impose a monetary penalty.

[3] The Claimant requested a reconsideration and the Commission changed its decision to accept that the Claimant was no longer self-employed or disentitled to benefits due to unavailability for work starting on July 1, 2017, which was after the Claimant closed his business. The Claimant appealed to the General Division but the General Division denied his appeal. He now seeks leave to appeal.

[4] There is no reasonable chance of success. The Claimant has not pointed to any error of natural justice, jurisdiction, or law and I have been unable to identify an arguable case that the General Division may have made any finding of fact that ignored or misunderstood significant evidence.

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 material before it?

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 for the material before it?

[9] In his leave to appeal application, the Claimant explained that he was looking for a job from October 6, 2017, and that he continued to be on "job search alert". However, the Claimant did not point to any evidence that the General Division overlooked or misunderstood in making any finding of fact.

[10] Regardless, I have reviewed the record for any mistaken or overlooked evidence that 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

---

[1] *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41*; Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

which the court determined that leave to appeal might still be granted where the General Division arguably overlooked or misunderstood key evidence, even where an applicant has not properly identified such an error under the grounds of appeal.

[11] The first issue before the General Division was whether the Claimant was entitled to benefits during any week in which he was working at or for his business. Section 30(1) of the *Employment Insurance Regulations* (Regulations), states that a claimant is considered to have worked a full working week (which would mean he was not unemployed or entitled to Employment Insurance benefits) in each week in which the claimant is self-employed or engaged in the operation of a business on the claimant's own account. Section 30(1) allows an exception to this general rule where a claimant's employment or engagement in the business is of such a minor extent that a person would not normally rely on the employment or engagement as a principal means of livelihood. Section 30(3) sets out the circumstances to be considered in determining whether the business involvement was of a minor extent.

[12] The General Division found that the Claimant had been self-employed and that his involvement was not of a minor extent from December 5, 2017, until the business closed June 30, 2017.

[13] The Claimant's intention and willingness to seek and immediately accept alternate employment is one of the six circumstances (found in section 30(3)(f) of the Regulations) that the General Division was required to consider, in order to determine those weeks in which the Claimant's involvement was not of a minor extent. The evidence of the Claimant's job search and intention would be relevant to this circumstance.

[14] The General Division acknowledged the Claimant's testimony that, in October, November and December 2017, he had been looking for work at any time and in any field, and that his job search involved seeking and applying for jobs online, and speaking to business owners.[3] The General Division also understood the Claimant's evidence that he had looked for an evening position to help pay the bills once he began operating the store.[4] However, the General Division noted that the Claimant's testimony was inconsistent with his employment

[3] General Division decision, para. 48
[4] *Ibid*., para. 49

questionnaire in which he stated that he was not seeking work outside of his employment,[5] and that he had not submitted any evidence to confirm his job search efforts.[6] The General Division concluded from its review of the six factors in section 30(3) of the Regulations that, after December 5, 2017, the Claimant's involvement in his business was not minor.

[15] The other issue before the General Division was whether the Claimant was capable and available for work under section 18(1)(a) of the *Employment Insurance Act* (EI Act). To determine that question, the General Division considered the three factors in the legal test described in *Faucher v. Canada (Employment and Immigration Commission).*[7] The second factor of that test requires that a claimant express his desire to return to the labour market through efforts to find a suitable employment. Once again, the General Division relied on the contradiction between the Claimant's testimony and his statement to the Commission and on the lack of supportive evidence for the Claimant's job search to determine that the Claimant had not expressed his desire to return to work through suitable efforts from December 5, 2017, forward. The General Division found that the Claimant was not available for work from December 5, 2017, forward.

[16] The Claimant may disagree with the General Division's assessment or weighing of the evidence, but it is not enough for the Claimant to disagree with the findings.[8] I cannot intervene in a decision unless there are grounds under section 58(1) of the DESD Act to find that the General Division has made an error. It is not my job to re-evaluate the evidence to reach a different conclusion.

[17] I am unable to find any evidence related to the Claimant's job search efforts that was ignored or misunderstood by the General Division in its evaluation of section 30(3)(f) of the Regulations or section 18(1)(a) of the EI Act.

---

[5] General Division decision, para. 38
[6] *Ibid.*
[7] *Faucher v. Canada (Employment and Immigration Commission) A-56-96*
[8] *Griffin v Canada (Attorney General)* 2016 FC 874; *Rouleau v. Canada (Attorney General)*, 2017 FC 534).

[18] I have also reviewed the record for any other significant evidence that may have been ignored or misunderstood by the General Division in making any finding of fact, but I have been unable to find any. There is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act.

[19] The Claimant has no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	M. T., Self-represented