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

Citation: *A. A. v Canada Employment Insurance Commission*, 2019 SST 354

Tribunal File Number: AD-18-505

BETWEEN:

A. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: April 11, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. A. (Claimant), was receiving Employment Insurance benefits when he accepted employment. He continued to receive benefits in the first two weeks that he was working. The Respondent, the Canada Employment Insurance Commission (Commission), allocated the Claimant's wages to the weeks in which he earned them, which resulted in an overpayment of benefits.

[3] The Claimant requested a reconsideration, but the Commission maintained its original decision as to the allocation of earnings. However, the Commission agreed to add two weeks of benefit entitlement to the end of his claim and thereby, to offset the overpayment. The Claimant appealed to the General Division of the Social Security Tribunal but the General Division dismissed his appeal. He now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success. He has not made out an arguable case that the General Division failed to observe any principle of natural justice, erred in jurisdiction, or that it made any finding of fact that ignored or misunderstood the evidence.

ISSUES

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction?

[6] 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

[7] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the substantive issues raised by the appeal.

[8] However, 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 DESD Act.

[9] 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.

[10] 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]

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction?

[11] The only ground of appeal that the Claimant selected in completing his application for leave to appeal is the ground of appeal concerned with natural justice and jurisdiction.

[12] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case

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

against him or her. The Claimant has not raised a concern with the adequacy of the notice of the General Division hearing, with the pre-hearing exchange or disclosure of documents, with the manner in which the General Division hearing was conducted or the Claimant's understanding of the process, or with any other action or procedure that could have affected his right to be heard or to answer the case. Nor has he suggested that the General Division member was biased or that the member had prejudged the matter. Therefore, there is no arguable case that the General Division erred under s. 58(1)(a) of the DESD Act by failing to observe a principle of natural justice.

[13] Turning to jurisdiction, the Claimant argued that the General Division did not consider the main issue but he did not identify what he believed the main issue to be. There were only two legal questions that arose from the reconsideration decision on appeal. The first question was whether the wages the Claimant received from his employer were earnings and the second was whether the Commission properly allocated those earnings. These were the issues that were before the General Division and the issues that it analyzed. The Claimant's original reconsideration request characterized the decision as an overpayment decision, which is fair to say, but the overpayment was the direct consequence of the allocation of the payments to weeks of the Claimant's benefit period.

[14] There is no arguable case that the General Division failed to consider the issues that were properly before it, or that it considered issues that it should not have considered, and the Claimant has not specified any other jurisdictional error. Therefore, there is no arguable case that the General Division erred under s. 58(1)(a) of the DESD Act by refusing to exercise its jurisdiction or by acting beyond its jurisdiction.

Issue 2: 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?

[15] As noted, the Claimant did not point to any specific evidence that the General Division overlooked or misunderstood. The Claimant states that the General Division did not consider the length of employment that led to the weeks of benefits "in dispute" but his meaning is unclear. If I assume that the Claimant intends "length of employment" to mean the number of hours of insurable employment that the Claimant had accumulated in his qualifying period and if the

Claimant's dispute is with the Commission's determination of the number of weeks of benefits to which he would be entitled in relation to those insurable hours, then none of this was before the General Division. The Commission's findings on hours of insurable earnings, or weeks of benefit entitlement because this had been established at the time his claim was initially accepted: It was not the issue addressed in the reconsideration decision that was on appeal to the General Division. The General Division did not have the jurisdiction to revisit the basis on which the Commission had established the number of weeks of benefit entitlement and it is therefore, not before me either.

[16] On the other hand, the Claimant may have meant that the General Division did not understand that the two weeks of earnings that the Commission allocated had been generated by a short "length of employment". If this is what he meant, then I am not satisfied that this is of any relevance to the decision that the General Division needed to make.

[17] I appreciate that the Claimant did not get paid immediately after he was hired and that he had expenses associated with his employment. The General Division acknowledged this as well. However, this does not change the fact that the Claimant earned wages for work during weeks in which he also received benefits. In accordance with section 36(4) of the *Employment Insurance Regulations,* those earnings must be allocated to the weeks in which they were earned. I do not see that the General Division ignored or misunderstood any evidence that was relevant to the legal requirement that earnings be allocated.

[18] For the information of the Claimant, it appears that he had reactivated his claim to receive an additional seven weeks of benefits from October 30, 2016, to December 10, 2016, for a total of 21 weeks (less the two weeks to which earnings had been allocated). Once the Commission allocated earnings to the weeks commencing June 12, 2016, and June 19, 2016, it displaced his entitlement to those two weeks of benefits to later within his benefit period, when he was unemployed once more. The Commission's allocation did not reduce the Claimant's total entitlement to weeks of benefits.

[19] Because the Claimant had established a new benefit period on December 11, 2016, the Commission bumped the second claim forward by two weeks to December 25, to allow the first claim to extend and include two of the weeks that would otherwise have fallen under the new

claim. The Commission did not pay the Claimant for these additional two weeks, but instead offset his entitlement to be paid against his obligation to repay the two weeks that he had worked while collecting benefits. The net result is that the Claimant received the full 21 weeks to which he was entitled under the initial claim, despite the allocation.

[20] In accordance with the direction of *Karadeolian v. Canada (Attorney General)*[2], I have reviewed the record for any other significant evidence that might have been ignored or overlooked but I have not discovered any such mistake in the General Division's consideration of the evidence.

[21] There is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act by basing its decision on an erroneous finding of fact that either ignored or misunderstood significant evidence.

[22] The Claimant has no reasonable chance of success.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	A. A., Self-represented

[2] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615