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

Citation: *J. K. v Canada Employment Insurance Commission*, 2019 SST 682

Tribunal File Number: AD-19-514

BETWEEN:

J. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: July 29, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused

OVERVIEW

[2] The Respondent, the Canada Employment Insurance Commission (Commission), reviewed medical information submitted by the Applicant, J. K. (Claimant) and decided that he was entitled to Employment Insurance sickness benefits until the end of July 2018. The Claimant said that he was medically fit to work again and claimed additional regular benefits as of July 23, 2018. The Commission reactivated his claim, but then found that he had voluntarily left his employment and that he was therefore disqualified from receiving benefits. It also found that he was disentitled from receiving regular benefits as of July 29, 2018, because he was not capable of and available for work.

[3] When the Claimant asked the Commission to reconsider, the Commission changed its decision and found that he had not voluntarily left his employment. The Commission said he was not *disqualified* from receiving benefits for that reason. However, the Commission did not change its decision that the Claimant was not entitled to *regular* benefits because it maintained that the Claimant was not capable of and available for work after July 29, 2018.

[4] The Claimant later claimed compassionate care benefits so that he could give care and support to his critically ill adult son. The Commission granted him an additional 15 weeks of compassionate care benefits from July 22, 2018, until the week ending November 3, 2018. This did not affect the earlier reconsideration decision, which had found that the Claimant was disentitled to *regular* benefits from July 29, 2018.

[5] The Claimant appealed to the General Division seeking to obtain additional weeks of benefits beyond the weeks of benefits he received as sickness benefits and compassionate care benefits. The General Division dismissed his claim because the Claimant was unable to prove that he was capable and available for work. The Claimant now seeks leave to appeal to the Appeal Division.

[6] There is no reasonable chance of success. I have been unable to discover an arguable case that the General Division may have based its decision on any finding of fact that was perverse or capricious or that ignored or misunderstood any of the evidence.

ISSUE

[7] 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

[8] 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).

[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]

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

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?

[11] The Claimant has stated that he does not understand why he should not be entitled to benefits when the only reasons that he could not work were that he had a medical condition and that he had to look after his ill son.

[12] I understand how the Claimant could be puzzled by the Commission's willingness to pay benefits at certain times and not at others. He has been paid two different types of benefits in his claim, and his denial was for third kind of benefit.

[13] At the beginning of his claim, the Commission gave the Claimant sickness benefits because it acknowledged that the Claimant had a medical condition and could not work for a time. Under section 18(1)(b) of the Employment Insurance Act (EI Act), a person who is unable to work because of illness or injury, but who would otherwise be available for work does not have to prove that he was "capable of and available for work". However, the Commission will only pay for up to 15 weeks of sickness benefits,[2] even though the claimant might still be unable to work because of illness or injury. The Commission paid the Claimant for the maximum number of weeks that are available under this benefit

[14] Next, the Claimant received compassionate care benefits to look after his ill adult son. Once again, the Claimant does not need to show that he is capable and available for work under section 18 of the Act.[3] He was granted an additional 15 weeks for this purpose, which is the maximum allowable again.[4]

[15] After the Claimant used up his sickness and compassionate care benefits, the only benefits that he could still ask for were regular benefits. However, to be entitled to regular benefits, the Claimant now had to prove that he was capable and available for work.[5] The

[2] Section 12(3)(c) of the EI Act
[3] Section 23.3(1) of the EI Act
[4] Section 12(3)(f) of the EI Act.
[5] Section 18(1)(a) of the EI Act

Commission did not accept that he was capable and available for work and neither did the General Division when the Claimant appealed.

[16] The General Division found as fact that the Claimant had recovered from his health condition by November 5, 2018, so that he was capable of working. However, even though the Claimant was physically or medically capable of work, he still needed to show that he was also available for work.

[17] The General Division found that the Claimant was not available for work after November 5, 2018. The General Division accepted that the Claimant's duty to look after his son did not restrict his availability to work by November 11, 2018, and that he did not place any other personal conditions on his job search that would limit his chances of returning to work. However, the General Division did not accept that the Claimant was available because he had not proven that he desired to return to work or that he had made efforts to find a suitable job. This was the key finding on which the decision was based.[6]

[18] The Claimant has not pointed to any evidence that the General Division may have overlooked or misunderstood in reaching this finding, or any other significant finding. Even so, the Federal Court has directed the Appeal Division that it should look beyond the stated grounds of appeal.[7] In accordance with that direction, I have reviewed the record for any other significant evidence that might have been overlooked or misunderstood and that may therefore, raise an arguable case. I could not identify any significant or relevant evidence that the General Division may have overlooked or misunderstood in reaching its findings.

[19] There is no arguable case that the General Division based its decision on any erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it—as would be required to find grounds for appeal under section 58(1)(c) of the DESD Act.

[20] I understand that the Claimant does not agree with the decision of the General Division and that he may feel the decision is unfair to him. Unfortunately for the Claimant, I am required

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[6] General Division decision, para. 26
[7] *Karadeolian* v. Canada (Attorney General) 2016 FC 615

to follow the law and I am only authorized to intervene in the General Division decision if I find that it has made an error under section 58(1) of the DESD Act. I cannot reweigh or reassess the evidence to reach a different conclusion.[8]

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	J. K., Self-represented

[8] *Griffin v. Canada (Attorney General)*, 2016 FC 874; *Tracey v. Canada (Attorney General)*, 2015 FC 1300