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

Citation: *N. C. v Canada Employment Insurance Commission*, 2019 SST 757

Tribunal File Number: AD-19-309

BETWEEN:

N. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: August 13, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, N. C. (Claimant), was laid off from his employment and he established a claim for Employment Insurance benefits. While receiving benefits in 2018, the Claimant spent some time away from his province of residence while he visited his family on July 14, 2018 and from July 21—July 26, 2018. He also left Canada on two separate occasions from April 10—April 25, 2018, and from July 15—July 20, 2018. The Claimant did not declare that he was out of the country or unavailable for work on his claim reports. After the Commission learned that the Claimant had been out of Canada, it determined that he was not entitled to benefits from April 10—April 25 and from July 15—July 20 both because that he was outside of Canada and because he had not proven his availability for work. It also determined that the Claimant was not entitled to benefits when he was visiting family because he had not proven his availability for work. The Commission found that the Claimant had knowingly made false representations and it imposed a penalty, but it later rescinded the finding of misrepresentation and the penalty. However, the Commission maintained its decision on the various disentitlements.

[3] 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.

[4] The Claimant has no reasonable chance of success on appeal. He has not made out an arguable case that the General Division made a jurisdictional error or that it failed to observe a principle of natural justice, and he has not identified any error that could be an error of law. In addition, I have not discovered any evidence that the General Division ignored or misunderstood when it made findings of fact on which it based its decision.

ISSUE

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice, or that it erred by acting beyond or refusing to exercise its jurisdiction?

[6] Is there an arguable case that the General Division erred in law?

[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

[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] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion.

[11] 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].

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

Issue 1: is there an arguable case that the general division failed to observe a principle of natural justice, or that it erred by acting beyond or refusing to exercise its jurisdiction?

[12] In completing his application for leave to appeal, the Claimant selected the ground of appeal concerned with natural justice and jurisdiction.

[13] 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 against him or her. The Claimant did not suggest that the General Division member was biased or that the member had prejudged the matter. He did not raise a concern with the adequacy of the notice of the General Division hearing, with the pre-hearing exchange or disclosure of documents, or with his own understanding of the process.

[14] However, the Claimant argued that he felt that the "yes or no" format did not allow him to explain himself fully. I assume that this is a reference to the General Division hearing process, and that the Claimant's argument is that his ability to be heard was affected negatively.

[15] However, I have reviewed the record and the General Division member was prepared to proceed in whatever manner the Claimant was most comfortable. The Claimant asked the member to put questions to him but, before doing so, the General Division had the Claimant explain in his own words his circumstances and the reasons for his appeal. The General Division member also asked a number of questions, most of which were open-ended. She put some of her questions to the Claimant so that they could be answered with a simple yes or no, but she did not insist on simple answers. The General Division did not prevent the Claimant from expanding on his responses, and he often did so.

[16] The Claimant has not raised an arguable case that his right to be heard was compromised, or that the General Division failed to observe any other principle of natural justice under section 58(1)(a) of the DESD Act.

[17] Turning to jurisdiction, there were several issues that were before the General Division. The reconsideration decision before the General Division was concerned with the disentitlement that arises under section 37 of the EI Act when a claimant is outside of Canada and whether the Claimant in this case met any of the exceptions under section 55 of the Regulations. The decision

was also concerned with his availability to work under section 18(1) when he was outside Canada and in other periods when he was visiting his family.

[18] The Claimant did not suggest that the General Division failed to consider these issues or that it considered issues that it should not have considered, nor did he identify 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 erred in law?

[19] Although, the Claimant also selected the ground of appeal concerned with an error of law, he did not point to any particular legal error, and none appears on the face of the record.

[20] The Claimant has not made out an arguable case that the General Division erred in law.

Issue 3: 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?

[21] The Claimant did not argue that the General Division made any erroneous finding of fact, or identify any evidence that the General Division ignored or misunderstood when it reached its conclusions. However, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal. In *Karadeolian v. Canada (Attorney General)*[2], the Court states as follows: "[T]he Tribunal must be wary of mechanistically applying the language of section 58 of the [DESD] Act when it performs its gatekeeping function. It should not be trapped by the precise grounds for appeal advanced by a self-represented party like [the Applicant in that case]."

[22] In accordance with the direction of *Karadeolian*, I have reviewed the record for any other significant evidence that might have been ignored or overlooked and that may, therefore, raise an arguable case.

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

[23] On review of the record, I was unable to discover an arguable case that the General Division overlooked or misunderstood evidence relevant to its finding that the Claimant had reasonable alternatives to leaving either employer or to the issue of earnings and allocation of earnings.

[24] There is no arguable case that the General Division based its decision on an erroneous finding of fact under s. 58(1)(c) of the DESD Act.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	N. C., Self-represented