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

Citation: *K. G. v Canada Employment Insurance Commission*, 2019 SST 763

Tribunal File Number: AD-19-507

BETWEEN:

K. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: August 14, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. G. (Claimant), who worked for a building supply company, is seeking leave to appeal the General Division's decision. This means that he has to get permission from the Appeal Division before he can move on to the next stage of his appeal. The General Division found that the Claimant voluntarily left his job and that there were reasonable alternatives to quitting. The General Division found that the Claimant was therefore disqualified from receiving any Employment Insurance regular benefits.

[3] The Claimant argues that the General Division failed to observe a principle of natural justice because it did not give him a fair chance to present his case, and that it erred in law by overlooking an issue. I have to decide whether there is an arguable case for the appeal. I am not satisfied that there is an arguable case and I am therefore refusing the Claimant's application for leave to appeal.

ISSUES

[4] The issues before me are as follows:

> **Issue 1:** Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to give the Claimant a fair chance to present his case?
>
> **Issue 2:** Is there an arguable case that the General Division erred in law by failing to consider whether the Claimant had just cause for voluntarily leaving his employment because of working conditions that constituted a danger to health or safety?

ANALYSIS

[5] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the three grounds of appeal listed in

subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The appeal also has to have a reasonable chance of success.

[6] The only three grounds of appeal under subsection 58(1) of the DESDA are:

(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.

[7] A reasonable chance of success is the same thing as an arguable case at law.[1] This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to give the Claimant a fair chance to present his case?

[8] For the most part, the Claimant is asking me to reconsider the General Division's decision and to give a different decision that is favourable to him. He argues that he had just cause to leave his employment.[2] However, subsection 58(1) of the DESDA does not allow for a reassessment of the evidence or a rehearing of the matter.

[9] The Claimant however claims that he "only had a limited time with videoconference."[3] He suggests that he did not get a fair hearing because the General Division held a videoconference rather than an in-person hearing. It seems that the Claimant is largely suggesting that the General Division member should have fully explained to him the concept of "just cause" or that he should have had the chance to ask more questions of her. He denies that he quit his job and argues that his employer fired him. He also claims that he has doctors' letters

[1] This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[2] See Request for leave to appeal, facsimile dated July 17, 2019, at AD1.
[3] See Application to the Appeal Division – Employment Insurance, at AD1B-2.

to prove that he was under stress on the job site. The Claimant does not otherwise suggest that he needed more time to present his case.

(a) Should there have been an in person hearing?

[10] When the Claimant filed his Notice of Appeal with the General Division, he indicated that he preferred either an in person hearing or videoconference hearing.

[11] The Claimant does not explain why the videoconference hearing was unfair to him, other than to suggest that there was not enough time for the hearing. But, the very nature of the hearing itself did not limit the amount of time for the hearing. In other words, the length of the hearing would not have mattered whether it was done in person or by videoconference.

[12] More importantly, the Claimant has not shown that he was at all disadvantaged by the fact that he gave testimony by videoconference rather than in person. For instance, he does not allege that there were any technical deficiencies with the videoconference hearing.

[13] On top of that, the General Division has the discretion to hold hearings by videoconference, or by any other means provided for by the *Social Security Tribunal Regulations*.[4] Besides, the courts have said that the General Division has the discretion to decide how to hold a hearing.[5]

[14] For these reasons, I am not satisfied that there is an arguable case that the General Division failed to observe a principle of natural justice by failing to provide the Claimant with an in person hearing.

(b) Was there enough time for the hearing?

[15] The Claimant suggests that he did not have enough time to ask questions. He would have liked to have asked more questions about the concept of "just cause" because he disputes that he quit his job and maintains that his employer fired him.

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[4] See section 21 of the *Social Security Tribunal Regulations*.
[5] This is what the court said in *Parchment v. Canada (Attorney General)*, 2017 FC 354.

[16] The Claimant maintains that his employer dismissed him from his job. He denies that he quit. The General Division acknowledged the Claimant's arguments in this regard, but ultimately found that the while the employer told him to leave, this was only after the Claimant gave notice to quit. The General Division also noted that the Claimant stated that he quit on his application for Employment Insurance benefits.[6] There was evidence upon which the General Division could come to this finding that the Claimant had voluntarily left his employment, so it was appropriate for it to turn to the question of whether the Claimant had just cause for voluntarily leaving his employment.

[17] The hearing before the General Division was not the first time that the issue of "just cause" came up. When the Claimant applied for Employment Insurance benefits, the Respondent, the Canada Employment Insurance Commission (Commission), wrote to him on October 4, 2018. The Commission denied his application at that time, explaining that it was unable to pay him benefits because he had voluntarily left his employment without just cause and that voluntarily leaving was not his only reasonable alternative.[7] The Commission did not change its mind on reconsideration and maintained that the Claimant had voluntarily left his employment.[8]

[18] The Commission raised the issue of just cause again in its representations to the General Division.[9] Notably, the Commission provided a copy of subsection 29(c) of the *Employment Insurance Act*. The subsection defines when "just cause" for voluntarily leaving an employment exists. The subsection reads in part that "just cause for voluntarily leaving an employment … exists if the claimant had no reasonable alternative to leaving … having regard to all the circumstances, including …"

[19] Then, in her opening remarks, the General Division member re-visited the issues of "voluntarily leaving" and "just cause" and explained that "just cause" means that the Claimant had no reasonable alternatives to leaving.[10] The General Division also pointed out the

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[6] See Application for Employment Insurance benefits, at GD3-9.
[7] See Commission's letter dated October 4, 2018, at GD3-29 to GD3-30.
[8] See Commission's reconsideration letter dated October 18, 2018, at GD3-35 to GD3-36.
[9] See Representations of the Commission to the Social Security Tribunal – Employment Insurance section, dated March 19, 2019, at GD4.
[10] At approximately 5:00, Part 1 of audio recording of General Division hearing.

Commission's arguments (at GD4-2). It is clear that the General Division member explained what "just cause" means and the case that the Claimant had to meet.

[20] The Commission let the Claimant know well in advance of the hearing about the case he had to meet. It was his own responsibility to properly prepare for his appeal. There was no basis for him to rely on the General Division in this regard because a General Division member does not serve as a claimant's legal representative and does not provide any legal assistance so that a claimant knows how to prove his case. The General Division is an independent and impartial decision-making body and is under no duty to provide any legal assistance.[11]

[21] Although the Claimant argues that he had more questions about "just cause," the General Division member fulfilled her duty by explaining the case that the Claimant had to meet, including explaining the requirements under the *Employment Insurance Act* and explaining what "just cause" entails. The Claimant does not otherwise suggest that he did not have enough time to present his case or give evidence.

[22] Given these considerations, I am not satisfied that there is an arguable case that the General Division failed to provide the Claimant with a fair chance to present his case.

Issue 2: Is there an arguable case that the General Division erred in law by failing to consider whether the Claimant had just cause for voluntarily leaving his employment because of working conditions that constituted a danger to health or safety?

[23] The Claimant argues that because he was under stress, he could not continue working at his job. He claims that he has supporting medical evidence. The General Division acknowledged that there were doctors' notes in the file and that the Commission had noted the Claimant's claims regarding his medical concerns. The member invited the Claimant to explain whether medical issues were relevant as to why he left his employment.[12]

[24] Ultimately, the General Division found that there was insufficient medical evidence to support the Claimant's allegations that he had to leave his job because of working conditions that constituted a danger to his health or safety. The General Division's decision did not detail the

[11] This is what the court said in *Papouchine v. Canada (Attorney General)*, 2018 FC 1138.
[12] At approximately 6:38, Part 1 of the General Division hearing.

evidence, but I see that there were medical notes dated November 29, 2018 and December 13, 2018.[13] The doctor wrote that the Claimant was unable to work since August 6 for health reasons. In December, the doctor was of the opinion that the Claimant could now return to work, but not with his previous employer due to health reasons.

[25] The General Division said that it considered the issue of the Claimant's health or medical concerns. There is no suggestion that the General Division overlooked or misconstrued any key pieces of evidence, including any of the medical evidence.

[26] As I stated above, there are limited grounds of appeal under the DESDA that do not allow me to conduct a reassessment. That said, I do not see that the medical notes that were before the General Division would have been of any assistance because they did not address the question of whether working conditions at the Claimant's employment constituted a danger to his health or safety. The Claimant did not produce any other medical evidence, so it was open for the General Division to have concluded that there was insufficient medical evidence.

[27] I am not satisfied that there is an arguable case that the General Division failed to consider whether the Claimant had just cause for voluntarily leaving his employment because of working conditions that constituted a danger to health or safety.

CONCLUSION

[28] I am refusing the application for leave to appeal.

Janet Lew
Member, Appeal Division

APPLICANT:	K. G., Self-represented

[13] Medical notes at GD2-8.