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

Citation: *C. Y. v Canada Employment Insurance Commission*, 2019 SST 787

Tribunal File Number: AD-19-506

BETWEEN:

C. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: August 21, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted, and the appeal is allowed. The decision that the General Division should have given is made. C. Y. (Claimant) is not disqualified from receiving regular Employment Insurance benefits (EI).

OVERVIEW

[2] The Claimant was employed as a home care worker in Alberta. She resigned from this job on November 7, 2018, to move to Newfoundland to be with her partner. She moved to Newfoundland in January 2019. The Claimant applied for EI.

[3] The Canada Employment Insurance Commission decided that the Claimant was disqualified from receiving EI because she had voluntarily left her employment without just cause. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason.

[4] Leave to appeal the General Division decision to the Tribunal's Appeal Division is granted, and the appeal is allowed because the General Division made an error in law when it failed to consider whether the Claimant had any employment to leave in the first place. She did not. The decision that the General Division should have given is made: the Claimant is not disqualified from receiving EI.

ISSUES

[5] Does the appeal have a reasonable chance of success because the General Division failed to observe a principle of natural justice?

[6] Does the appeal have a reasonable chance of success because the General Division made an error in law?

[7] If the appeal has a reasonable chance of success, should the Appeal Division intervene, and if so, what remedy is appropriate in this case?

ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. They are that the General Division failed to observe a principle of natural justice, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.[1] If at least one of these errors was made, the Appeal Division can intervene. The Claimant's grounds of appeal are considered below in this context.

Issue 1: Principles of natural justice

[9] One ground of appeal that I can consider is that the General Division failed to observe a principle of natural justice. These principles are concerned with ensuring that the parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an impartial decision maker based on the law and the facts.

[10] The Claimant says that the General Division decision should be overturned because it was not fair. However, nothing suggests that the Claimant was not able to present her case, know or answer the Commission's legal case, or that the General Division was biased. The Claimant's disagreement with the General Division decision does not point to the General Division having failed to observe a principle of natural justice. The appeal does not have a reasonable chance of success on this basis.

Issue 2: Error in law

[11] Another ground of appeal that I can consider is whether the General Division made an error in law. The Commission says that the General Division made such an error when it decided that the Claimant voluntarily left her employment. The General Division correctly sets out that

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[1] DESD Act s. 58(1)

claimants are disqualified from receiving EI if they voluntarily leave any employment without just cause.[2] However, the General Division failed to consider whether the Claimant in this case had any employment to leave because there was no work available to her. This was an error in law as a fundamental part of the applicable legal test was not properly administered, and the appeal has a reasonable chance of success on this basis.

Issue 3: Should the Appeal Division intervene?

[12] The Appeal Division can intervene when the General Division makes an error in law. It did so in this case. While the decision correctly states that it must consider whether a claimant had a choice to leave their employment, it failed to consider that the Claimant did not have any employment to leave. The Claimant stated that while she had not worked for the employer since November 2018 due to a shortage of work she remained an employee, but there was no work for her.[3] She obtained part-time work when it was available.[4] There is no evidence that contradicts this. Therefore, the Claimant had no work to leave. She had stopped working due to shortage of work long before her move of January 2019.

[13] The Appeal Division should therefore intervene.

REMEDY

[14] The DESD Act sets out what remedies the Appeal Division can give when it intervenes. This includes referring the matter back to the General Division or giving the decision that the General Division should have given,[5] and that the Tribunal can decide any question of law or fact necessary to dispose of an appeal.[6] The *Social Security Tribunal Regulations* also require that the Tribunal complete matters as quickly as the considerations of fairness and natural justice permit.[7]

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[2] General Division decision at para. 6
[3] GD3-35
[4] GD3-38
[5] DESD Act s. 59(1)
[6] DESD Act s. 64
[7] *Social Security Tribunal Regulations* s. 3

[15] It is appropriate for me to give the decision that the General Division should have given in this case. The evidence is undisputed, and there are no gaps in it. The legal issue to be decided is straightforward. The Claimant applied for EI benefits some time ago, and further delay would be incurred if the matter were referred back to the General Division.

[16] The facts are summarized as follows:

a) The Claimant was employed as a home care worker in Alberta;

b) The employer did not have work for the Claimant to do before she quit;

c) The Claimant remained an employee with the employer in case work became available for her;

d) The Claimant quit her job in November 2018 to move to Newfoundland to follow her partner;

e) The Claimant's move to Newfoundland was delayed to January 2019 because of inclement weather.

[17] The evidence shows that the Claimant did not voluntarily leave work. She stopped working due to a shortage of work. She then moved to Newfoundland to follow her partner there. She is therefore not disqualified from receiving regular EI benefits.

CONCLUSION

[18] Leave to appeal is granted.

[19] The appeal is allowed and the decision that the General Division should have given is made. The Claimant is not disqualified from receiving regular EI benefits.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	C. Y., Self-represented Angèle Fricker, Representative for the Respondent