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

Citation: *J. B. v Canada Employment Insurance Commission*, 2019 SST 790

Tribunal File Number: AD-19-558

BETWEEN:

J. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: August 22, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. B. (Claimant), voluntarily left his employment for a number of reasons including his hearing loss and a work environment that he perceived as hostile to him. When he applied for Employment Insurance benefits, the Respondent, the Canada Employment Insurance Commission (Commission) denied his claim. The Commission determined that he had left his employment without just cause. The Commission maintained this decision after the Claimant requested a reconsideration.

[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 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 a principle of natural justice or that it based its decision on an erroneous finding of fact.

ISSUES

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice, or that it acted beyond or refusing to exercise its 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 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).

[8] 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.

[9] 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 that it erred by acting beyond or refusing to exercise its jurisdiction?

[10] 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.

[11] 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 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

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

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.

[12] Turning to jurisdiction; the only issue before the General Division was whether the Claimant had just cause for leaving his employment. According to section 29(c) of the *Employment Insurance* Act (EI Act), just cause is established when a claimant has no reasonable alternative to leaving having regard for all the circumstances.

[13] The Claimant did not suggest that the General Division failed to consider whether he had just cause for leaving his employment or that it considered other 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 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?

[14] Although the only ground of appeal selected by the Claimant involves an assertion of a natural justice error, the Claimant stated that the General Division did not give enough consideration to the fact that he received medical leave after leaving his position. He claims that this supports his claim that his work situation was intolerable. In my view, the Claimant has raised a concern that the General Division may have based its decision on an erroneous finding of fact under section 58(1)(c) of the DESD Act.

[15] The Claimant noted in his request for reconsideration that he received 15 weeks of medical EI after he left work,[2] and he followed this with a discussion of audiologist appointments and his hearing loss. The Claimant had also told the Commission that he was dealing with medical issues surrounding his hearing loss prior to February 2019 and that he was seeing a psychologist and dealing with medical issues from February 2019-May 2019. [3]

[2] GD3-38
[3] GD3-45

[16] The Claimant left his job in July 2018. Therefore, the only evidence before the General Division in connection with his receipt of medical EI benefits would suggest that the medical EI was related to his hearing loss and not to psychological issues.

[17] The fact that the Claimant obtained medical EI would be of relevance to the question of whether his hearing loss affected his work and could have been a factor in his leaving. However, the General Division did not question this. The General Division noted that the Claimant learned about his hearing loss before he quit and that the Claimant asserted that it had affected his performance at work. However, the General Division found that that the Claimant did not ask for accommodation for his hearing loss. The General Division decision was based on its finding that the Claimant had reasonable alternatives to quitting, which included discussing his various concerns with Human Resources and/or the Union, and his doctor. The General Division is not required to refer to each and every piece of evidence but is presumed to have considered all of the evidence before it.[4]

[18] I appreciate that the Claimant may disagree with the manner in which the General Division weighed and analyzed the evidence and with its conclusions, but the Claimant has not pointed to any evidence that was ignored or misunderstood by the General Division. Simply disagreeing with the findings does not establish a ground of appeal under s. 58(1) of the DESD Act,[5] nor does a request to reweigh the evidence establish a ground of appeal that has a reasonable chance of success.[6]

[19] The Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal in *Karadeolian v. Canada (Attorney General)*[7]. In accordance with the direction of *Karadeolian*, I have reviewed the record for any other significant evidence that might have been ignored or overlooked. I have not discovered an arguable case that the General Division made such a mistake.

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

---

[4] *Simpson v. Canada (Attorney General)*, 2012 FCA 82.
[5] *Griffin v. Canada (Attorney General)*, 2016 FC 874.
[6] *Tracey v. Canada (Attorney General)*, 2015 FC 1300.
[7] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	J. B., Self-represented