



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. D. v Canada Employment Insurance Commission*, 2019 SST 985

Tribunal File Number: AD-19-599

BETWEEN:

R. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: September 10, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] R. D. (Claimant) worked in a fast food restaurant for approximately 17 months, on night shift. In January 2019, he was not scheduled to work. He was scheduled to work again in February 2019. The Claimant did not work, but resigned at that time. He then applied for regular Employment Insurance benefits (EI). The Canada Employment Insurance Commission decided that the Claimant was disentitled to receive benefits from January 3rd to February 5th because he was suspended from work, and that he was disqualified from receiving benefits after February 5th because he voluntarily left his employment without just cause.

[3] The Claimant appealed the Commission's decisions to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reasons. The Claimant's application for leave to appeal to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success on the basis that the General Division failed to observe a principle of natural justice when it failed to obtain further evidence, or that it based its decision on erroneous findings of fact because it preferred the Employer's evidence to that of the Claimant.

ISSUES

[4] Does the appeal have a reasonable chance of success because the General Division failed to observe a principle of natural justice when it failed to obtain further evidence?

[5] Does the appeal have a reasonable chance of success because the General Division based its decision on an erroneous finding of fact when it preferred the Employer's evidence to the Claimant's?

ANALYSIS

[6] 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 In addition, leave to appeal must be refused if the appeal has no reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success. The Claimant's grounds of appeal are considered below in this context.

Issue 1: Natural justice

[7] One ground of appeal that I can consider is whether the General Division failed to observe a principle of natural justice. These principles are concerned with ensuring that all 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 independent decision maker. The Claimant argues that the General Division was biased in this case because it preferred the Employer's evidence to his own.

[8] However, there is no suggestion that the Claimant was prevented from presenting any evidence to the Tribunal, or that he did not know the other party's legal case. The General Division decision explains why it preferred the Employer's evidence regarding the Claimant's inappropriate behaviour. For example, the decision states that other employees provided information to the employer about the Claimant's behaviour when the employer was absent, and customers complained about the fact that lights were out and the menu was restricted. Restaurant security cameras also confirmed the employer's evidence.³ The Claimant's disagreement with how the General Division weighed the evidence is not sufficient for the appeal to have a reasonable chance of success on this basis.

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ General Division decision at para. 16

Issue 2: Erroneous finding of fact

[9] Another ground of appeal that I can consider is whether the General Division based its decision on an erroneous finding of fact under the DESD Act. To succeed on appeal on this basis, the Claimant would have to prove three things: that a finding of fact was erroneous (in error); that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and that the decision was based on this finding of fact.⁴

[10] First, the Claimant argues that he was never suspended from work. The General Division acknowledged this, and the decision states that the employer had to think about how to proceed in light of the Claimant's conduct so did not schedule him for work from January 3rd to February 6th.⁵ After considering all of the circumstances, the General Division concluded that the Claimant was suspended because of his misconduct.⁶ There was an evidentiary basis for this finding of fact. Therefore it was not erroneous, and the appeal does not have a reasonable chance of success on this basis.

[11] The Claimant also argues that he did not quit his job, but was forced to resign so that his reputation was not sullied. This is acknowledged in the General Division decision.⁷ This is the evidentiary basis upon which the General Division found as fact that the Claimant voluntarily left his employment. This finding of fact is also not erroneous, and the appeal has no reasonable chance of success on this basis.

[12] Finally, the Claimant argues that the General Division based its decision on erroneous findings of fact because it did not consider potential evidence from co-workers who worked with him on January 3rd. However, it is the responsibility of parties to an appeal to decide what evidence they will present to the Tribunal and to do so. It is not for the General Division to contact witnesses or find documents that would support a party's legal position. Therefore, the appeal does not have a reasonable chance of success because the General Division failed to

⁴ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

⁵ General Division decision at para. 12

⁶ *Ibid.* at para. 26

⁷ *Ibid.* at para. 31

obtain evidence that was not presented by a party.

[13] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

CONCLUSION

[14] Leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	R. D., Self-represented
------------------	-------------------------