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

Citation: *J. L. v Canada Employment Insurance Commission*, 2019 SST 976

Tribunal File Number: AD-19-504, AD-19-505

BETWEEN:

J. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 11, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. L. (Claimant), worked for two different employers, X (X) and X (X), during a period in which he was also also collecting Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission) learned about these jobs until a few months after the Claimant had already quit. It decided that the Claimant did not have just cause for quitting either job. As a result, the Claimant was disqualified from receiving employment insurance benefits and he was required to repay benefits that he had already received.

[3] The Claimant asked the Commission to reconsider its decisions that he did not have just cause for quitting the two jobs, but the Commission did not change either decision. The Claimant appealed to the General Division of the Social Security Tribunal, but his appeals were dismissed. The Claimant now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success. He has not pointed to any error that the General Division made and I have been unable to discover any evidence that was ignored or misunderstood.

PRELIMINARY MATTERS

[5] The General Division considered the question of the Claimant's voluntarily leaving X without just cause under its file number GE-19-1124, and the question of the Claimant's voluntarily leaving X under GE-19-1127. The matters were heard together at the General Division and combined in a single decision. Appeals to the Appeal Division were accepted under AD-19-504 and AD-19-505. The Appeal Division considers the appeals joined and will likewise issue a single decision that will address both appeals.

ISSUE(S)

Ge-19-1124

[6] Is there an arguable case that the General Division erred in law in finding that the Claimant did not have just cause for leaving X when he was being harassed at work?

[7] Is there an arguable case that the General Division based its decision that the Claimant did not have just cause for leaving X on an erroneous finding of fact that misunderstood or ignored that the Claimant was harassed at work?

Ge-19-1127

[8] Is there an arguable case that the General Division based its decision that the Claimant did not have just cause for leaving X on an erroneous finding of fact that misunderstood or ignored that the Claimant was prevented from taking breaks?

ANALYSIS

General Principles

[9] 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).

[10] 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.

[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].

Issue 1: Is there an arguable case that the General Division erred in law in finding that the Claimant did not have just cause for leaving X when he was being harassed at work?

[12] The Claimant's original application for leave to appeal selected the ground of appeal concerned with natural justice and jurisdiction but did not elaborate. I wrote the Claimant asking him for the basis for his appeal, and he provided a brief note in which he set out his concerns with the General Division decision.

[13] Regarding X, the Claimant argued that "the Commission acknowledged [that he] was being harassed, and harassment is just cause for having to leave a place of employment." He referred to paragraph 21 of the General Division decision which reads as follows:

> I believe that the Claimant was unhappy at work because of name-calling. However, the Claimant said that he could not remember if he talked to human resources. He said he did not think human resources would have helped him anyways. He said he was not a full union member yet, so he did not ask his union for help. He kept an eye out for other work, but he did not find a new job before he quit because he was too depressed to keep working at this job.

[14] Therefore, I have considered the Claimant to be advancing either an error of law or an erroneous finding of fact in relation to his appeal of the X decision.

[15] Section 29(c) of the *Employment Insurance Act* (EI Act) states that a claimant will have just cause for leaving his employment if he has no reasonable alternative to leaving, having regard to all the circumstances. A number of circumstances are listed in section 29(c)(i) to (xiv), and the first of these is "sexual or other harassment".

[16] However, section 29(c) of the EI Act does not say that the existence of "harassment" establishes just cause. The correct test is whether a claimant has reasonable alternatives to

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

leaving; not whether there is harassment in the workplace. According to section 29(c), the existence of harassment is one of the circumstances that must be considered (where it is suggested by the evidence), by the Commission (or the General Division) when it decides whether a claimant has any reasonable alternative to leaving his or her employment.

[17] The General Division did not say whether it considered the name-calling the Claimant experienced at work to be harassment, but it was aware that it occurred and it was aware that the Claimant viewed it as a form of harassment. Even though the Claimant may have been subjected to name-calling, the General Division determined that the Claimant quit when he still had reasonable alternatives to leaving. The General Division stated that he might first have attempted to deal with the name-calling by bringing his concerns with the behaviour to the attention of the employer's human resources department or to the union.

[18] There is no arguable case that the General Division erred in law under section 58(1)(b) of the DESD Act. It clearly considered the name-calling that the Claimant characterized as "harassment", and therefore cannot be said to have failed to have regard to the circumstances. Even if it had explicitly found that these circumstances constituted harassment, this would not mean that it was required to find the Claimant had just cause for leaving.

Issue 2: Is there an arguable case that the General Division based its decision that the Claimant did not have just cause for leaving X on an erroneous finding of fact that misunderstood or ignored that the Claimant was harassed at work

[19] The Claimant has not pointed to any evidence that the General Division ignored or misunderstood when it found that he did not have reasonable alternatives to leaving X. He has not made out an arguable case that the General Division erred by "basing its decision on an erroneous finding of fact, made in a perverse or capricious manner, or without regard to the material before it" as is required by section 58(1)(c) of the DESD Act.

Issue 3: Is there an arguable case that the General Division based its decision that the Claimant did not have just cause for leaving X on an erroneous finding of fact that misunderstood or ignored that the Claimant was prevented from taking breaks?

[20] On the appeal of the decision that he voluntarily left X without just cause, the Claimant argued only that "the owner of the company or representative of is being very untruthful and no

breaks were allowed, thus endangering [his] health and safety." He referred to paragraph 14 of the General Division decision which reads as follows:

> The owner disagreed with the Claimant. He told the Commission that they follow labour laws. Drivers could take breaks during loading. Drivers could also pull over to take breaks while they were driving.

[21] I understand this to be an argument that the General Division made an erroneous finding of fact. The Claimant does not agree with the employer's evidence that he could have taken breaks. However, the General Division did not base its decision on a finding that the Claimant was allowed to take breaks or not. The General Division said that it believed the Claimant when he said that he was worried about his safety (because he believed he was not permitted breaks). However, the General Division found that he had the reasonable alternative of talking to the owner before he quit.

[22] The General Division acknowledged the Claimant's evidence that the employer's dispatcher told him to keep moving when he tried to take a break, and that the owner's son had mocked him for taking or wanting to take a break. However, it determined that the Claimant could have raised the issue with the owner of the company before quitting, rather than assuming that the dispatcher and the owner's son's views reflected the owner's views or meant that the employer did not allow employees to take breaks. In other words, even if the Claimant honestly believed that his employer did not permit him to take breaks, he still had a reasonable alternative to simply quitting.

[23] I do not find an arguable case that the General Division misunderstood or ignored evidence when it found that he had a reasonable alternative to leaving.

[24] I have also reviewed both appeal files for other potential errors. 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 stated 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

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

self-represented party like [the Applicant in that case].” Therefore, I have reviewed the files for any other significant evidence that might have been ignored or overlooked and that may, therefore, raise an arguable case. Unfortunately for the Claimant, I have not discovered any instance of this.

[25] 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.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	J. L., Self-represented