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

Citation: *J. P. v Canada Employment Insurance Commission*, 2019 SST 980

Tribunal File Number: AD-19-567

BETWEEN:

J. P.

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. P. (Claimant), felt bullied and disrespected at her employment (Retirement Residence). Shortly after starting, she voluntarily left the job. She had been receiving Employment Insurance benefits when she accepted the position, and she continued to receive benefits after she quit. However, when the Respondent, the Canada Employment Insurance Commission (Commission) discovered that the Claimant had quit her job, it made a decision that she had left her employment without just cause. The Claimant was disqualified from receiving benefits.

[3] In its reconsideration decision, the Commission maintained its decision that she voluntarily left her employment. The Claimant appealed to the General Division of the Social Security Tribunal which dismissed her appeal. She next appealed to the Appeal Division, and I found that the Claimant could not easily determine what decisions had or had not been made by the Commission, or the justification for those decisions, and that the General Division had not clarified its jurisdiction. Therefore, I found that the Claimant's right to be heard was compromised, and I referred the matter to the General Division.

[4] The General Division held another oral hearing in which it considered only the question of whether the Claimant had voluntarily left her employment without just cause. It dismissed the Claimant's appeal on this issue. The Claimant not seeks leave to appeal to the Appeal Division once again.

[5] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division failed to observe a principle of natural justice or made a jurisdictional error. There is also no arguable case that the General Division's ignored or misunderstood the Claimant's evidence regarding her mental health, when it found that she had no reasonable alternative to leaving.

ISSUE(S)

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction?

[7] Is there an arguable case that the General Division erroneously found that the Claimant had no reasonable alternatives to leaving by ignoring or misunderstanding her mental health issues?

ANALYSIS

General Principles

[8] 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).

[9] 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.

[10] 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].

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

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction?

[11] The only ground of appeal that the Claimant selected in completing her application for leave to appeal is the ground of appeal concerned with natural justice and jurisdiction.

[12] 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 process, or with any other action or procedure that could have affected her right to be heard or to answer the case. Nor has she 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.

[13] Turning to jurisdiction; the General Division requested additional information from the Commission in order to clarify its jurisdiction. As a result, the General Division restricted its decision to the question of whether the Claimant voluntarily left her employment without just cause. The Claimant has not identified in what manner the General Division made an error of jurisdiction and I do not find that there is an 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 erroneously found that the Claimant had no reasonable alternatives to leaving by ignoring or misunderstanding her mental health issues?

[14] Although the only ground of appeal selected by the Claimant involves her assertion of a natural justice error, the Claimant is clearly taking issue with the fact that the General Division did not understand the effect of her mental health issues. Furthermore, the Appeal Division is expected to look beyond the stated grounds of appeal. In *Karadeolian v. Canada (Attorney*

General)[2], the Court states 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 self-represented party like [the Applicant in that case]." Therefore, I will consider whether the General Division may have made an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the evidence before it.

[15] There is no arguable case that the General Division ignored or misunderstood the Claimant's evidence about her mental health. It noted the Claimant's testimony that she experienced stress in her new work environment and that she was feeling unwell when she quit. It also acknowledged the Claimant's difficult circumstances at or about the time that she left her employment and that these circumstances may have contributed to her difficulty at work. It referred to her evidence of personal health struggles with high blood pressure and depression, as well as chronic migraine headaches, and shingles.

[16] However, the General Division was unable to find that her work circumstances amounted to a danger to her health or safety because the Claimant could not produce medical evidence to confirm such a danger. The General Division concluded that she still had reasonable alternatives to leaving her employment. The General Division appreciated that the Claimant did not have a family doctor and did not trust that a local doctor would be familiar with her medications, but it still found that she could have consulted a doctor to confirm that her job was impacting her health and to seek a medical recommendation regarding whether she should remain in the job or not.

[17] On review of the record, I was unable to discover an arguable case that the General Division overlooked or misunderstood other evidence that would be relevant to its finding that the Claimant had reasonable alternatives to leaving her employer.

[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. However, she cannot establish a ground of appeal under s. 58(1) of the DESD Act by simply disagreeing with the

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

findings,[3] and an application that is only a request to reweigh the evidence that was before the General Division does not establish a ground of appeal that has a reasonable chance of success.[4]

[19] 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.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	J. P., Self-represented

[3] *Griffin v. Canada (Attorney General)*, 2016 FC 874
[4] *Tracey v. Canada (Attorney General)*, 2015 FC 1300