



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. R. v Canada Employment Insurance Commission*, 2019 SST 968

Tribunal File Number: AD-19-364

BETWEEN:

S. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: September 10, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] S. R. (Claimant) worked in a X in British Columbia. His hours of work were reduced over a period of time. The Claimant left this work and returned to live in Calgary with his family. He applied for regular Employment Insurance benefits (EI). The Canada Employment Insurance Commission refused the application because it decided that the Claimant had voluntarily left his employment without just cause.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason. I granted the Claimant leave to appeal this decision to the Tribunal's Appeal Division because the appeal had a reasonable chance of success based on the General Division having made an error in law. However, after considering the parties' written submissions, the Claimant's oral submissions at the hearing, the documents filed with the Tribunal and the recording of the General Division hearing, I have decided that the General Division did not make any reviewable error in its decision.

[4] The General Division did not make an error in law when it failed to consider that the Claimant had returned to Calgary to reside with his family, and it did not base its decision on an erroneous finding of fact regarding the reduction in working hours offered to the Claimant. Finally, the General Division did not make an error when it failed to base its decision on compassionate or humanitarian considerations. The appeal is therefore dismissed.

PRELIMINARY MATTER

[5] The Canada Employment Insurance Commission did not attend the hearing. It wrote to the Tribunal just before the hearing date and advised that it would not attend.

ISSUES

[6] Did the General Division make an error in law when it failed to consider that the Claimant returned to Calgary to reside with his family?

[7] Did the General Division base its decision on an erroneous finding of fact regarding the number of hours that the Claimant worked?

[8] Did the General Division make an error under the *Department of Employment and Social Development Act* (DESD Act) because it failed to base its decision on compassionate or humanitarian considerations?

ANALYSIS

[9] The 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.

Issue 1: Error in law

[10] One ground of appeal that I can consider is whether the General Division made an error in law. The Employment Insurance Act states that a claimant is disqualified from receiving EI if they voluntarily left their employment without just cause.² Just cause for voluntarily leaving employment exists if the claimant had no reasonable alternative to leaving, having regard to all of the circumstances. The Act also provides a list of things that may be just cause, including the obligation to accompany a spouse or dependent child to another residence.³

¹ DESD Act s. 58(1)

² *Employment Insurance Act* s. 29(c)

³ *Ibid.* s. 29(c) (ii)

[11] The Claimant argues that the General Division erred in law because it failed to consider that when he left work in British Columbia he returned to Alberta to be with his family. However, this argument was not raised at the General Division hearing. The General Division cannot be faulted for not considering legal arguments that were not presented before it⁴.

[12] In addition, the Claimant was not obliged to accompany a spouse or dependent child to another residence. It is rather the other way around; his family remained in Calgary when he moved to work in British Columbia. His return to Calgary was just that, not a move to accompany someone to a new residence. Therefore, the appeal fails on this basis.

[13] **Issue 2: Erroneous finding of fact**

[14] 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 this basis, the claimant must demonstrate 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.⁵

[15] The Claimant argues that the General Division based its decision on an erroneous finding of fact regarding his work hours. The decision states that his hours were reduced from 24 hours to 16 hours per week over time in 2018.⁶ The Claimant argues that his hours were reduced from 40 hours per week to 16 hours per week. This would be a more significant reduction in work hours.

[16] However, I have listened to the General Division hearing recording. The Claimant did not testify that he worked 40 hours per week. He clearly said that his work hours were reduced from 24 to 16, over a certain period of time. Thus, there was an evidentiary basis for the General Division to find as fact that the Claimant's work hours were reduced from 24 to 16. This finding of fact was not erroneous.

[17] The General Division did not overlook or misconstrue any important information and the

⁴ *Rouleau v. Canada (Attorney General)*, 2017 FC 534

⁵ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

⁶ General Division decision at para. 8

conclusion of its decision was not based on an erroneous finding on facts. The appeal therefore fails on this basis also.

Issue 3: Compassionate and humanitarian grounds

[18] Finally, the Claimant writes in documents filed with the Appeal Division that he would like the appeal decided on a humanitarian and compassionate basis. However, the Tribunal is created by statute. As such, it only has legal authority to do what is permitted in the statute. The DESD Act does not permit the Tribunal to make decisions on the basis of compassionate grounds or extenuating circumstances. The Tribunal must consider the *Employment Insurance Act* and apply this legislation to the facts before it. Therefore, the appeal cannot succeed on this basis.

CONCLUSION

[19] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	September 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. R., Appellant