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

Citation : *B. B. v Canada Employment Insurance Commission*, 2019 SST 1255

Tribunal File Number: AD-19-635

BETWEEN:

B. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 26, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, B. B., is an electrician employed by a limited company in which he and his wife hold fifty percent of the shares, and his brother and his brother's wife hold the other fifty percent of the shares. He and his brother are the only permanent employees of the company. He applied for Employment Insurance benefits because of a shortage of work but the Respondent, the Canada Employment Commission, denied his claim because he was self-employed and could not be considered unemployed. The Claimant requested a reconsideration but the Commission maintained its original decision.

[3] The Claimant next appealed the reconsideration decision to the General Division of the Social Security Tribunal. The General Division dismissed his claim, confirming that he could not be considered unemployed because his involvement in the limited company was not minor. 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 evidence that the General Division ignored or misunderstood and I have been unable to discover an arguable case that the General Division based its decision on an erroneous finding of fact.

ISSUE

[5] Is there an arguable case that the General Division erroneously found that the Claimant's involvement in his business was not minor?

ANALYSIS

General Principles

[6] 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).

[7] 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.

[8] 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 erroneously found that the Claimant's involvement in his business was not minor?

[9] During any week in which a claimant is self-employed or engaged in the operation of a business on the claimant's own account, or in a partnership or co-adventure, the claimant is considered to have worked a full working week.[2] Claimants are not entitled to Employment Insurance benefits during weeks that they are engaged in operating their businesses[3] unless their

[1] *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41*; Ingram v. Canada (Attorney General)*, 2017 FC 259.
[2] Section 30(1) *Employment Insurance Regulations*.
[3] *Employment Insurance Act*, sections 9 and 11(1).

involvement in the business is so minor that they would not normally rely on employment in the business as their means of livelihood.[4]

[10] The General Division considered the various circumstances described in Section 30(3) of the *Employment Insurance Regulations* (Regulations) and found that the Claimant's employment was not minor within the meaning of section 30(2) and that he was therefore not entitled to benefits. The Claimant argued that the hour or two that he put into the business visiting subdivisions and the total time he spent to complete the paperwork was minimal. He argued that the business is small and does not require him to complete paperwork on a daily basis.

[11] The Claimant disagrees with the General Division's finding of fact that his involvement in the business was not minor, but he has not identified any evidence that the General Division ignored or misunderstood. The General Division understood that the Claimant spent "an hour or two a day visiting subdivisions under construction" and the Claimant does not suggest that the General Division was mistaken on the facts - he simply argues that he considers this to be "minor".

[12] The Claimant also argues that the paperwork was minimal and states in his submission that this paperwork was not "daily". His assertion that the paperwork was not daily is new evidence that was not before the General Division and I am not authorized to consider it.[5] The General Division's statement that the Claimant had paperwork daily was supported by the evidence on file: On February 25, 2019, the Commission "asked the [Claimant] what his day-to-day involvement was with the company and [the Claimant] stated he takes part in the daily paper work and gives it to his accountant at month end".[6]

[13] The Claimant also argued that the evidence did not support that he devoted the whole of his time to his business. He stated that the General Division ignored his evidence that there was no residential electrical work available at the time because it was winter and there was a downturn in the residential housing market.

---

[4] Section 30(2) *Employment Insurance Regulations.*
[5] *Mette v. Canada (Attorney General)*, 2016 FCA 276.
[6] GD3-23

[14] The General Division's statement that he was devoting the whole of his time to his business was based on the Claimant's evidence that he continued to seek work through his business, but that he did not seek alternate work elsewhere or otherwise than through his own business. The General Division's meaning was that the Claimant worked and looked for work *exclusively* through his own business, which is undisputed. This is relevant to the question of whether the Claimant's involvement in the business was minor. Section 30(3)(f) of the Regulations identifies a "claimant's intention and willingness to seek and immediately accept alternate employment" as a circumstance that must be considered to determine if a claimant's involvement is minor.

[15] The Claimant made it clear to the General Division that he would not accept work from any other employer under any circumstances because it would interfere with his ability to service existing clients of his business and because it would not be fair to the new employer when he quit to resume his work under his own business. Given the Claimant's refusal to look for or accept work outside of his business, the general availability of work is not relevant to whether the Claimant's involvement in his own business was minor. There is no arguable case that the General Division made an error by not considering the Claimant's evidence that the economy was slow or that it was off-season for residential electrical work.

[16] I understand that the Claimant disagrees with the General Division that his involvement was not minor, but simple disagreement with the General Division's conclusion is not a ground for appeal.[7] Furthermore, it is not my role to reweigh or reassess the evidence that was before the General Division.[8] I could not interfere in the decision even if I would have found the facts differently or reached a different conclusion, unless I could first find that the General Division made an error under one of the grounds of appeal in section 58(1) of the DESD Act.

[17] I have searched the record for any other significant evidence that the General Division might have ignored or overlooked but that the Claimant did not identify, in accordance with the direction of higher court decisions, such as *Karadeolian v. Canada (Attorney General).*[9] I was unable to discover an arguable case that the General Division overlooked or misunderstood any

---

[7] *Griffin v Canada (Attorney General),* 2016 FC 874.
[8] *Bergeron v. Canada (Attorney General), 2016 FC 220; Hideq v. Canada* (*Attorney General*), *2017 FC 439*
[9] *Karadeolian v. Canada (Attorney General),* 2016 FC 615

evidence that was relevant to a finding of fact on which the decision was based, including the finding that the Claimant knew that she was working when she completed the declarations on her weekly claim reports.

[18] There is no arguable case that the General Division's finding that the Claimant's involvement in the business was minor was a perverse or capricious finding, or one which ignored or misunderstood the evidence. Put another way, there is no arguable case that the General Division made an error under section 58(1)(c) of the DESD Act.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	B. B., Self-represented