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

Citation: *T. W. v Canada Employment Insurance Commission*, 2019 SST 1002

Tribunal File Number: AD-19-568

BETWEEN:

T. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: October 10, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. W. (Claimant), is seeking leave to appeal the General Division's decision dated July 30, 2019. Leave to appeal means that an applicant has to get permission from the Appeal Division before they can move on to the next stage of the appeal process.

[3] The General Division decided that the Claimant was disqualified from receiving Employment Insurance benefits because it had determined that he had voluntarily left his employment as a jockey with an automotive garage on February 5, 2016, without just cause. The Claimant argues that the General Division failed to observe a principle of natural justice because it failed to provide him with the recording of a 2016 conversation he had with an agent for the Respondent, the Canada Employment Insurance Commission (Commission). He also argues that the "facts on file do not add up; previous employer time line not exact."[1]

[4] I have to be satisfied that the appeal has a reasonable chance of success before granting leave to appeal. I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing the application for leave to appeal.

ISSUES

[5] There are two issues:

(i) Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to provide him with the recording of a 2016 conversation he had with an agent for the Commission?

[1] See Application to the Appeal Division – Employment Insurance, at AD1-2.

(ii) Is there an arguable case that 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 regarding his employment?

ANALYSIS

[6] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the three grounds of appeal listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The appeal also has to have a reasonable chance of success.

[7] The only three grounds of appeal under subsection 58(1) of the DESDA are:

(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] A reasonable chance of success is the same thing as an arguable case at law.[2] This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

[9] The Claimant argues that the General Division erred under subsections 58(1)(a) and (c) of the DESDA.

[2] This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

(i) Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to provide him with the recording of a 2016 conversation he had with an agent for the Commission?

[10] The Claimant argues that the General Division failed to observe a principle of natural justice by failing to provide him with the recording of a 2016 conversation he had with an agent for the Commission.

[11] There are notes of a January 8, 2016 conversation between the Claimant and an agent for the Commission. At paragraph 14 of its decision, the General Division noted that it had asked the Commission for notes from its conversations with the Claimant during January and February 2016.

[12] The General Division asked for these notes because the Claimant stated that the Commission advised him to leave his job. If these notes had showed that the Commission had advised the Claimant to leave his employment, the Claimant might have been able to show that he had just cause for having voluntarily left his employment. In response to the General Division's request, the Commission produced records of conversations dated December 17, 2015 and January 8, 2016.[3] Neither record suggests that the Commission advised the Claimant to leave his job.

[13] The General Division acknowledged that the notes could have been incomplete and for this reason, it was prepared to accept that Emploi-Canada referred the Claimant to his training program before he left his job. In other words, the Claimant did not need to have the recording because the General Division was prepared to accept the Claimant's claims that someone had referred him to a training program. The Claimant then interpreted the referral as a basis to leave his job.

[14] Nevertheless, I asked the Commission whether it had recorded a conversation with the Claimant on January 8, 2016. The Commission replied that it does not record any conversations between agents and clients.[4]

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[3] See Supplementary Representations of the Commission to the Social Security Tribunal – Employment Insurance section, with attached Supplementary Records of Claim, dated December 17, 2015, and January 8, 2016, at GD8.
[4] See Commission's letter dated September 25, 2019, at AD3.

[15] I am not satisfied that there is an arguable case that the General Division failed to observe a principle of natural justice because it failed to provide him with an audio recording. The recording does not exist but, even if it did, the Claimant did not need it because the General Division accepted the Claimant's claim that he had been referred to a training program before he left his job.

(ii) Is there an arguable case that 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 regarding his employment?

[16] The Claimant argues that 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 regarding his employment. In particular, he says that the "facts on file do not add up; previous employer time line not exact."

[17] Even if the facts regarding the Claimant's previous employment before his job with the automotive garage are "not exact," I find this irrelevant to the issue of whether the Claimant had just for having voluntarily left his employment with the automotive garage. The Claimant's past employment would not explain why he might have left his later employment with the automotive garage. For this simple reason, I am not satisfied that there is an arguable case based on this argument.

[18] Out of an abundance of caution, I asked the Claimant for clarification. I asked him some additional questions regarding this particular ground.[5] In particular, I asked the Claimant what findings or time line he alleges do not add up and what evidence there was to prove that these findings or time line were wrong. I asked him to identify the evidence that showed the correct time line. However, the Claimant did not answer, nor did he contact the Tribunal asking for more time to answer.

[19] The General Division found that the Claimant worked at a garage from January 4, 2016 to February 5, 2016. The Claimant left his employment after speaking with the Commission. In January or February 2016, he spoke with the Commission and soon after, left his employment to attend training. The General Division found that at around February 24, 2016, the Claimant

[5] See Tribunal's letter dated September 23, 2019.

applied for a training program. It also found that the Claimant began attending the program in August 2016.

[20] The General Division's findings regarding any time lines are consistent with the evidence that was before it. The Record of Employment confirms that the Claimant worked at the garage from January 4, 2016 to February 5, 2016.[6] Telephone log notes show that the Claimant advised the Commission that he started his training in August 2016.[7] The Claimant's testimony also indicates that he applied to the school on February 24, 2016[8] and that he began training in August 2016.[9]

[21] I do not see any conflicting evidence regarding these time lines or any other key pieces of evidence. As such, I am not satisfied that there is an arguable case based on this ground.

CONCLUSION

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

Janet Lew
Member, Appeal Division

APPLICANT:	T. W., Self-represented

[6] The Claimant testified at the General Division hearing that he might have left this employment on February 3 or 4, 2016, shortly after his uncle passed away.
[7] See phone log notes dated May 24, 2019, at GD3-28, and May 27, 2019, at GD3-30.
[8] At approximately 14:21 of the audio recording of the General Division decision.
[9] At approximately 14:46 of the audio recording of the General Division decision.