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

Citation: *K. C. v Canada Employment Insurance Commission*, 2019 SST 1025

Tribunal File Number: AD-19-633

BETWEEN:

K. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: October 15, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. C. (Claimant), is seeking leave to appeal the General Division's decision. 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 disqualified the Claimant from receiving any Employment Insurance regular benefits because it found that there was insufficient evidence to show that the Claimant had just cause for leaving two jobs. It found that she had reasonable alternatives in each case. The Claimant claimed that she had just cause. She argues that the General Division made several errors. I have to decide whether the appeal has a reasonable chance of success.

[4] For the reasons that follow, I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing leave to appeal.

ISSUES

[5] The following issues are before me:

(a) Is there an arguable case that the General Division failed to give the Claimant a fair hearing?

(b) Is there an arguable case that the General Division erred in law or based its decision on an erroneous finding of fact without regard for the material before it when it considered whether she had just cause for leaving both jobs?

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.[1] 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.

(a) Is there an arguable case that the General Division failed to give the Claimant a fair hearing?

[9] The Claimant argues that the General Division failed to give her a fair hearing. She alleges that the General Division cut her off from and did not give her a chance to present her case.

[10] I gave the Claimant a copy of the audio recording of the General Division hearing. I asked her to identify (by providing me with the timestamps from the recording) where the General Division cut her off during the hearing or otherwise did not give her a chance to present her case. However, the Claimant did not respond, nor did she ask the Social Security Tribunal for any extra time to answer.

[11] I have listened to the audio recording of the General Division hearing. There were approximately two or three times where the General Division member thought the Claimant had

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

finished responding to questions, so the member began to speak again, at about the same time that the Claimant started to talk. The member did not expect the Claimant to start talking again at the same time. Even so, the member gave the Claimant multiple chances to say anything she wanted about her case. Throughout the hearing, including at least three times in her closing remarks, the member asked the Claimant whether there was anything else the Claimant wanted to say.

[12] While the General Division member and the Claimant spoke at the same time on three different occasions, I find that this was inadvertent on the part of the General Division member. I also find that the General Division member gave the Claimant the full opportunity to present her case. As such, I am not satisfied that there is an arguable case on this particular ground.

(b) Is there an arguable case that the General Division erred in law or based its decision on an erroneous finding of fact without regard for the material before it when it considered whether she had just cause for leaving both jobs?

[13] The Claimant claims that she left her employment with X, a home care facility, in part, because there was a change in her work duties and because the employer was unable to provide her with more hours or even guarantee her regular part-time work. The Claimant argues that the General Division "did not adequately consider" these circumstances.

Change in work duties

[14] Under subsection 29(c) of the *Employment Insurance Act*, just cause for voluntarily leaving an employment may exist if the claimant had no reasonable alternative leaving, having regard to, among other things, whether there are "significant changes in work duties."[2]

[15] At paragraphs 13 and 14, the General Division addressed the Claimant's arguments that there was a change in her work duties at X. The General Division found that the Claimant did not provide enough evidence to prove that there was a significant change in her work duties.

[16] Essentially, the Claimant is arguing that the General Division erred in applying settled law to the facts. However, the Federal Court of Appeal has affirmed that the Appeal Division has

[2] See subsection 29(c)(ix) of the *Employment Insurance Act*.

no jurisdiction to consider errors that merely involve a disagreement on the application of settled law to the facts.[3] The Appeal Division may intervene under subsection 58(1) of the DESDA where an error of mixed fact and law committed by the General Division discloses an extricable legal issue, but such is not the case here.

[17] To the extent that the Claimant is urging me to reassess the evidence and come to a different conclusion, subsection 58(1) of the DESDA does not allow for a reassessment on the evidence.

[18] I am not satisfied that the appeal has a reasonable chance of success based on the argument that the General Division failed to adequately consider the fact that her work duties changed.

Lack of guaranteed hours

[19] The Claimant claims that she had also argued before the General Division that she had just cause to leave her employment with X because it could not guarantee regular part-time work or more hours for her. The Claimant argues that lack of guaranteed hours constitutes good cause for voluntarily leaving her employment.

[20] I do not see any evidence that the Claimant ever raised this argument with the General Division. The Claimant testified that she left her employment with X because the work (lifting up clients) caused so much pain, stress and damage to her back.[4] She ruled out the fact that she was a single mother supporting a daughter and her ongoing search for full-time employment as reasons she left her employment. While the Claimant may have been concerned about the limited hours of work, she did not raise this at any time during the hearing before the General Division.

[21] If the Claimant did not argue that she left her employment with X because she was not getting enough hours or guaranteed part-time employment, the General Division could not possibly have known that it was an issue for the Claimant. The Claimant should have raised this issue with the General Division. It is now too late for the Claimant to raise it, in the hopes that I

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[3] *Cameron v. Canada (Attorney General)*, 2018 FCA 100 and *Garvey v. Canada (Attorney General)*, 2018 FCA 118.
[4] At approximately 30:45 to 36:49, 42:24 to 43:30 and at 50:30 to 51:46 of the General Division hearing.

might consider whether the limited hours or lack of guaranteed hours constitutes just cause for having voluntarily left her employment with X.

[22] I am not satisfied that the appeal has a reasonable chance of success based on the argument that the General Division failed to consider whether she had just cause because her employer could not give her more work or guarantee regular part-time work.

CONCLUSION

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

Janet Lew
Member, Appeal Division

APPLICANT:	K. C., Self-represented