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

Citation: *G. S. v Canada Employment Insurance Commission*, 2019 SST 1269

Tribunal File Number: AD-19-597

BETWEEN:

G. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 23, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal the August 2019 General Division decision is refused.

OVERVIEW

[2] The Applicant, G. S., applied for Employment Insurance (EI) regular benefits in March 2019. Her claim for benefits was approved by the Respondent, the Canada Employment Insurance Commission (Commission), and started in March 2019.

[3] The Applicant reported that she left Canada from May 5, 2019. She is currently in the United States with no immediate plans to return to Canada. The Commission accepted that she was she was entitled to a seven-day exemption for a bona fide interview from May 6, 2019 to May 12, 2019. However, it imposed a disentitlement to EI benefits from May 13, 2019.

[4] The Applicant requested reconsideration. The Commission maintained its initial decision. The Applicant appealed to the General Division of the Social Security Tribunal of Canada.

[5] The General Division found that the Applicant has been out of Canada from May 5, 2019, and that she is entitled to a seven-day exception because one of the purposes of her trip was to attend a bona fide interview in the United States. The General Division also found that the Applicant was not entitled to any additional exemptions and, therefore, she is disentitled from EI benefits from May 13, 2019.

[6] The Applicant filed an application for leave to appeal with the Appeal Division and submitted that the General Division did not properly evaluate her case. She argues that the General Division failed to observe a principle of natural justice and based its decision on serious errors in fact finding. She also submits new evidence.

[7] I find that the appeal does not have a reasonable chance of success, because the application for leave to appeal simply repeats arguments the Applicant made to the General Division and does not disclose any reviewable errors.

ISSUES

[8] Is there an arguable case that the General Division failed to observe a principle of natural justice?

[9] Is there an arguable case that the General Division based its decision on a serious error in its findings of fact?

[10] Is the Applicant's new evidence admissible at the Appeal Division?

ANALYSIS

[11] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.[1]

[12] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?[2]

[13] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error.[4] The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[14] The Applicant submits that the General Division misconstrued an email to a prospective employer. She also argues that the General Division made errors in its fact-finding and that there

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[1] *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).
[2] *Osaj v Canada (Attorney General)*, 2016 FC 115, at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208, at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363, at para 22.
[3] DESD Act at s. 58(2).
[4] *Ibid.* at s. 58(1).

was a miscarriage of natural justice because she could not meet the medical requirements of the EI Act due to the medical system in Canada.

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

[15] I find that there is no arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction.

[16] "Natural justice" refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. It is settled law that an applicant has the right to expect a fair hearing with a full opportunity to present their case before an impartial decision-maker.[5]

[17] The Applicant argues that the General Division breached principles of natural justice, because the EI Act requires a level of medical evidence that is not possible to meet because of the current medical system in Canada. Although the Applicant expresses disappointment with the General Division decision, she does not provide any evidence that her right to be heard was interfered with, that the hearing (by written questions and answers) itself was conducted in an unfair manner, or that the General Division member was biased.

[18] An allegation of prejudice or bias of a tribunal is a serious allegation. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of the applicant. It must be supported by material evidence demonstrating conduct that "derogates from the standard."[6]

[19] The application for leave to appeal did not explain how the General Division failed to observe a principle of natural justice, and there was no material evidence supporting the Applicant's argument that the General Division member imposed more stringent medical requirements than is within its jurisdiction. There is no error relating to natural justice that is apparent on the face of the record, either.

[20] The appeal does not have a reasonable chance of success based on this ground.

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[5] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 22.
[6] *Arthur v Canada (A.G.)*, 2001 FCA 223.

Issue 2: Is there an arguable case that the General Division based its decision on a serious error in its findings of fact?

[21] I find that there is no 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.

[22] The general rule is that a claimant is not entitled to receive benefits for any period that the claimant is not in Canada.[7] This appeal turns on whether the Applicant demonstrated that her situation falls within the exceptions set out in section 55(1) of the EI Regulations.[8]

[23] In arriving at its findings of facts, the General Division considered the documentation on file as well as the Applicant's answers to written questions (about the circumstances and her intentions relating to her departure from Canada).

[24] The General Division considered whether the Applicant met any of the exceptions.[9] It its analysis on this point, the General Division noted an email from a prospective employer dated April 28, 2019, which shows that she was invited for an interview in Tennessee on May 7, 2019. The Applicant takes issue with reference in the Commission's submissions about an email the Applicant wrote in that chain of emails. However, the General Division did not refer to the Applicant's email or the Commission's submission about it. Therefore, the General Division did not make any erroneous finding of fact in this regard.

[25] The Applicant also takes issue with the General Division's finding that she did not "prove that she is in the United States for the purpose of undergoing medical treatment that would not be available in her area of residence [in Canada]."[10] However, the General Division did not make an erroneous finding of fact. The Applicant did not introduce evidence to show that medical treatment for her sinusitis was not readily available in her area of residence in Canada.

[26] The General Division considered the Applicant's arguments and the evidence on file. It considered her circumstances and each of the reasons she gave to explain her position that her

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[7] Subsection 37(b) of the *Employment Insurance Act* (Act).
[8] General Division decision, at para 9.
[9] *Ibid.* at paras 11-24.
[10] *Ibid.* at para 16.

primary purpose for leaving Canada was to deal with her sinusitis. The General Division decision includes an analysis of the Applicant's arguments. The General Division did not err by failing to consider the Applicant's relevant arguments and did not base its decision on any erroneous findings of fact.

[27] A simple repetition of the Applicant's arguments falls short of disclosing a ground of appeal that is based on a reviewable error. I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence.

[28] The appeal does not have a reasonable chance of success based on this ground.

Issue 3: Is the Applicant's new evidence admissible at the Appeal Division?

[29] The Applicant's new evidence is not admissible at the Appeal Division.

[30] The application for leave to appeal included a letter from the Applicant and she has submitted other correspondence and documents since filing the application. The Applicant submits these documents to show her "activities to obtain employment [in Tennessee]"[11] and the "history of her sinus health."[12]

[31] New evidence is not a ground of appeal under section 58 of the DESD Act. It was incumbent upon the Applicant to present any evidence she had to the Commission and to the General Division before or at the hearing.

[32] The new evidence was not in the record before the General Division prior to its decision of August 2019. Therefore, it cannot form the basis of an argument that the General Division made a reviewable error by not considering the information the evidence allegedly contains.

[33] The appeal does not have a reasonable chance of success based on the new evidence.

[34] In terms of the new evidence, I note that the Applicant may wish to consider filing an application with the General Division to rescind or amend her General Division decision, under

[11] AD1B: Correspondence from the Applicant to the Tribunal, September 25, 2019 by e-mail.
[12] AD1C: Correspondence from the Applicant to the Tribunal, October 20, 2019 by e-mail.

section 66 of the DESD Act, and within one year after the day on which a decision was communicated to her.

CONCLUSION

[35] I am satisfied that the appeal has no reasonable chance of success, so the application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	G. S., self-represented