



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *S. S. v Canada Employment Insurance Commission*, 2019 SST 1287

Tribunal File Number: AD-19-604

BETWEEN:

S. 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 25, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. S., applied for Employment Insurance (EI) benefits in March 2019, because he was in apprenticeship training from February to April 2019. The Respondent, the Canada Employment Insurance Commission (Commission) asked the Applicant for a reference code to show that he had been referred to apprenticeship training by the provincial designated authority. The Applicant did not provide his reference code. The Commission determined that the Applicant had not been referred to apprenticeship training by the designated authority and, therefore, could not be paid EI benefits.

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

[4] The General Division found that the Applicant left his employment to attend carpentry apprenticeship training, that to be exempt from the availability requirements of the EI regime he had to be have been referred by the designated authority, and the Applicant did not prove that WorkBC (the designated authority in his province) referred him to training. Therefore, the Applicant did not meet the availability requirements to be paid EI benefits while he was attending the training.

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

[6] 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

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

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

ANALYSIS

[9] 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

[10] 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

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ 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.

[12] The Applicant submits that the General Division was unfair. He argues that the General Division failed to consider that the information he received from his employer, the training school, and WorkBC was confusing. He also argues that the General Division made errors in its fact-finding.

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).

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

[13] 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.

[14] “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

[15] The Applicant argues that the General Division was unfair, because it did not consider that the Applicant was not adequately informed by the Commission, X (the school), WorkBC and his employer about a referral by a designated authority or a reference code for EI benefits. Although the Applicant expresses disappointment with the General Division decision, he does not provide any evidence that his right to be heard was interfered with, that the hearing itself was conducted in an unfair manner, or that the General Division member was biased.

[16] 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 was unfair. There is no error relating to natural justice that is apparent on the face of the record, either.

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

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

[18] 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.

[19] This appeal turns on whether the Applicant is exempt from having to be available for and actively seeking employment. To be exempt, he needs to show that the Commission or their

⁵ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 22.

designated authority in his province referred him to attend his apprenticeship training.

[20] The General Division considered the Applicant's arguments about his attempts to obtain a reference code showing that he had been referred.⁶ However, the General Division found that "despite their efforts and good intentions of trying to obtain a reference code after he completed his training, the [Applicant] has not proven he had been registered as an apprentice with the X in BC or was referred to training by WorkBC."⁷

[21] The finding that the Applicant did not prove he was referred to training by the designate authority was not erroneous. This finding, therefore, does not constitute a reviewable error.

[22] The General Division considered the Applicant's arguments and the evidence on file. It considered his testimony and each of the reasons he gave to explain his position that he did not know what a reference code was or how to obtain one. 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.

[23] 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.

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

CONCLUSION

[25] 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

⁶ General Division decision at paras 7-16.

⁷ *Ibid.* at para 17.

REPRESENTATIVE:	E. S., representative for the Applicant
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