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

Citation: *J. S. v Canada Employment Insurance Commission*, 2019 SST 1325

Tribunal File Number: AD-19-655

BETWEEN:

J. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 5, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. S. (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 found that the Claimant did not show that he had just cause for leaving his job with a moving and storage company. It also found that he had reasonable alternatives to leaving. As a result, the General Division decided that the Claimant was disqualified from receiving any Employment Insurance benefits. The Claimant argues that the General Division failed to observe a principle of natural justice.

[4] The Claimant recently received a cheque from his former employer for missing pay, after more than a year. He received the payment only because he complained to the Ministry of Labour. He claims that the fact that his employer was forced to pay him proves that his employer mistreated him. He claims that he therefore had just cause for leaving his job.

[5] I have to decide whether the appeal has a reasonable chance of success. 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.

ISSUE

[6] Are there any grounds of appeal?

ANALYSIS

[7] 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.

[8] 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.

[9] 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.

[10] The Claimant argues that the General Division made a mistake under subsection 58(1)(a) of the DESDA. On October 8 and 16, 2019, the Social Security Tribunal asked the Claimant to provide details of his appeal. He notes that he had recently received a cheque from his former employer for missing wages.[2] He claims that his employer would not have paid him if he had not complained to the Ministry of Labour. He argues that this proves that his employer mistreated him. He argues that this also proves that his employer dismissed him from his job.

[11] The Claimant received his employer's cheque after the General Division had already made a decision. The General Division could not have known that his employer would be giving him a paycheque. This information is new.

[1] This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[2] See email dated October 27, 2019, from the Claimant, at AD1B-1.

[12] As a general rule, the Appeal Division does not consider new evidence. There are exceptions,[3] but the new evidence does not fall within any of the exceptions to the general rule against accepting new evidence.

[13] In any event, the General Division was aware of the Claimant's arguments that his employer mistreated him and that there was a dispute over his pay. The General Division decided that, "a matter of unresolved retroactive pay in of itself does not constitute mistreatment."[4] The General Division looked at the Claimant's working conditions. It decided that if the Claimant was able to continue working there for as long as he did, the conditions could not have been that bad.

[14] I cannot second-guess the General Division's assessment. The DESDA limits what I can do. Subsection 58(1) of the DESDA does not allow for a reassessment of the evidence or a rehearing. The Appeal Division can overturn a decision of the General Division "only when a person shows that the General Division made an error of the sort listed under subsection 58(1) of the DESDA."[5] That is not the case here, even though the Claimant argues that the General Division failed to observe a principle of natural justice under subsection 58(1)(a) of the DESDA.

[15] I do not see that the General Division failed to observe a principle of natural justice. There is no evidence to suggest that the General Division member failed to give the Claimant adequate notice of the hearing, that there were any issues over the disclosure of documents, the manner in which the General Division conducted the hearing, or any other procedure that affected the Claimant's right to be heard or to answer the case. There is no issue either that the General Division member was biased or had prejudged the appeal.

[16] None of the Claimant's arguments before me has to do with whether the General Division process was fair or conducted in accordance with the principles of natural justice.

---

[3] See *Sharma v. Canada (Attorney General)*, 2018 FCA 48 and *Perez v. Hull and Canada (Attorney General)*, 2019 FCA 238. The Federal Court of Appeal listed the exceptions when the Appeal Division can consider new evidence.
[4] See General Division decision, at para. 15.
[5] See *Gittens v. Canada (Attorney General)*, 2019 FCA 256.

[17] Finally, even if the Claimant's employer had mistreated him, he still had to show that he did not have any reasonable alternatives to leaving his job.[6] The General Division properly interpreted and applied the *Employment Insurance Act* in this regard. The General Division noted that the Claimant had to try to resolve his concerns with his employer, or to show that he tried to look for another job before quitting. The General Division did not see any efforts by the Claimant to try to resolve his concerns or to find other work. The General Division found that the Claimant had reasonable alternatives to leaving his job.

[18] Because the General Division found that the Claimant had reasonable alternatives to leaving his job, he did not have just cause for leaving his job. This meant that he was disqualified from receiving Employment Insurance benefits.

CONCLUSION

[19] I find that the appeal does not have a reasonable chance of success. Therefore, I am refusing the application for leave to appeal.

Janet Lew
Member, Appeal Division

APPLICANT:	J. S., Self-represented

[6] See subsection 29(c) of the *Employment Insurance Act* which says that just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances.