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

Citation: *M. S. v Canada Employment Insurance Commission*, 2019 SST 1323

Tribunal File Number: AD-19-772

BETWEEN:

M. 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 4, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. S. (Claimant), a driver, 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 transportation company. It found that he had not proven that quitting his job was the only reasonable thing that he could do. As a result, the General Division decided that the Claimant was disqualified from getting Employment Insurance benefits.

[4] The Claimant argues that the General Division failed to observe a principle of natural justice. He argues that the General Division's decision was unfair and imbalanced. He suggests that the General Division did not want to listen to him discuss how his employer had harassed him. He also says that because he was harassed, he qualifies for Employment Insurance benefits.

[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.

ISSUES

[6] Is there an arguable case that the General Division did not give the Claimant a fair hearing?

[7] Is there an arguable case that the General Division made a legal error when it said that being harassed was not enough to qualify for benefits?

ANALYSIS

[8] 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.

[9] 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.

[10] 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.

Is there an arguable case that the General Division did not give the Claimant a fair hearing?

[11] The Claimant argues that the General Division did not give him a fair hearing because "all they wanted to discuss was the [*Employment Insurance Act*] and very little about harassment." In other words, he says that he did not get much of a chance to talk about how his employer had harassed him.

[12] The Claimant argues that if he had had the chance to show that he had been harassed, he would have qualified for Employment Insurance benefits. This is why it was important for him to

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

be able to talk about how his employer had harassed him. Yet, the Claimant does not say what else he would have said, if the General Division had given him the chance to talk.

[13] I have listened to the audio recording of the General Division hearing. The hearing lasted close to 53 minutes. In her opening remarks, the member told the Claimant that he could explain why he stopped working.[2] The Claimant told the member that he quit because of excessive harassment. The Claimant told the member that he had detailed all the harassment in his letter to the General Division. He also went on to describe to the member how he had been harassed. He spent more than half an hour describing how he had been harassed. The member also made it clear that she was giving time to the Claimant to tell his story. Close to the end of the hearing, the Claimant responded that he told the member everything.[3] He stated, "I've said everything I can say."[4]

[14] I am not convinced that the General Division member did not give a fair chance to the Claimant to tell his story about how he had been harassed. He stated that he had said everything he could say. Besides, the Claimant said that everything was set out in his letter. I am not satisfied that there is an arguable case that the General Division did not give the Claimant a fair hearing.

Is there an arguable case that the General Division made a legal error when it said that being harassed was not enough to qualify for benefits?

[15] The Claimant argues that as long as he was harassed at work, he qualifies for Employment Insurance benefits. He suggests that it does not matter what the *Employment Insurance Act* says. He says that the General Division made a legal error by relying on the *Employment Insurance Act* because he should have qualified for benefits anyway, based on the fact that he had been harassed.

[16] In fact, the General Division actually found that there was no harassment. At paragraph 24, the member wrote, "I do not believe that the Claimant has proven that his employer was harassing him… reporting the Claimant's failure to follow company policy about filling up the

[2] At approximately 9:44 of the General Division hearing.
[3] At approximately 45:12 to 45:35 of the General Division hearing.
[4] At approximately 45:54 of the General Division hearing.

gas tank is not harassment. … disciplining the Claimant because he did not follow company policy is not harassment."

[17] The General Division then went on to say that, even if the employer had harassed the Claimant, he had to prove that there was nothing reasonable left for him to do except to quit his job.

[18] Anyone who wants benefits under the *Employment Insurance Act* has to meet the rules set out by the *Employment Insurance Act.* If an applicant does not meet these rules, then they do not qualify for benefits.

[19] The *Employment Insurance Act* says that an applicant who leaves their job has to have just cause for having left their job. The *Employment Insurance Act* defines what "just cause" is. It says that there is just cause if the applicant did not have any reasonable alternatives to leaving. Or, as the General Division put it, the Claimant had to prove that quitting his job was the only reasonable thing he could do.

[20] Under the *Employment Insurance Act*, it is not enough just to show that there was harassment. An applicant still has to show that they did not have any reasonable choice but to leave their job, given the circumstances.[5] In this regard, the General Division properly interpreted and applied the *Employment Insurance Act*.

[21] I am not satisfied that there is an arguable case that the General Division made a legal error when it said that being harassed was not enough to qualify for benefits and that a claimant had to show that there no reasonable alternatives to leaving their job.

[22] Finally, I cannot re-examine the General Division's findings as to whether the Claimant had reasonable alternatives to quitting his job. This calls for a reassessment of the evidence. I am limited as to what I can do by the DESDA. The Appeal Division can overturn a decision of the

[5] See subsection 29(c)(i) 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, including any of the following: (i) sexual or other harassment.

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."[6] That is not the case here.

CONCLUSION

[23] 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

REPRESENTATIVE:	M. S., Self-represented

[6] See *Gittens v. Canada (Attorney General)*, 2019 FCA 256.