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

Citation: *R. M. v Canada Employment Insurance Commission*, 2019 SST 1471

Tribunal File Number: AD-19-871, AD-19-872

BETWEEN:

R. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 30, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. M. (Claimant), was already collecting Employment Insurance benefits in May 2016, at the time that he stopped working for an employment agency. He left so that he could obtain full-time work with another employer. The Respondent, the Canada Employment Insurance Commission (Commission), later learned that the Claimant may have quit his job. When the Claimant did not respond to any of the Commission's requests for information, the Respondent relied on information from the employer to find that the Claimant had voluntarily left his employment without just cause. As a result, the Claimant would have to repay the Employment Insurance benefits that he had received. The Commission imposed a penalty on the Claimant for having made false statements about his earnings on his Claim reports, and it gave him a notice of violation for what is termed a "very serious" violation. The Commission also reallocated the Claimant's actual earnings.

[3] The Claimant asked the Commission to reconsider its decisions. The Commission maintained its decision that the Claimant had voluntarily left his employment but it changed the other decision. The Commission decided that the Claimant had not knowingly made a false statement and it removed the penalty and notice of violation. The Commission did not change the allocation of earnings.

[4] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division considered the appeal as two separate appeals, although only one hearing was held to deal with both appeals. The first appeal[1] concerns the Commission's finding that the Claimant voluntarily left his employment without just cause. This finding had the effect of

[1] GE-19-3633

disqualifying the Claimant from receiving benefits and resulted in the overpayment. The second appeal[2] relates to the Commission's allocation of the Claimant's earnings.

[5] The Claimant has no reasonable chance of success on either appeal. He has not made out an arguable case that the General Division acted in a way that was unfair to him, and I have not found any evidence that was ignored or overlooked that could support an arguable case that the General Division made an important error of fact in either appeal.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[6] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is a case that the Claimant could argue and possibly win.[3]

[7] "Grounds of appeal" means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:[4]

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

PRELIMINARY MATTERS

[8] The Claimant filed one application for leave to appeal, which the Appeal Division has processed as a request to appeal both decisions. Therefore, I will consider both appeals, but I have combined them into one decision.

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[2] GE-19-3634

[3] This is explained in a case called Canada (Minister of Human Resources Development) v Hogervorst, 2007, FCA 41; and in Ingram v Canada (Attorney General), 2017 FC 259.

[4] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act.*

ISSUE

[9] Is there an arguable case that the General Division acted unfairly by finding the Claimant should have to repay benefits when such a long time had passed since he received them?

ANALYSIS

Delay in the process

[10] The Claimant has argued that the appeal was unfair, but he has not argued that the General Division process was unfair. His argument is that the size of his overpayment including interest is as large as it is because of delay by the Commission.

[11] In one of the decisions that was on appeal to the General Division, the Commission had determined that the Claimant had voluntarily left his employment without just cause. This decision disqualified him from receiving Employment Insurance benefits. In the other decision before the General Division, the Commission considered how he had reported his earnings while on benefits.

[12] The Claimant did not dispute the amounts that he received or that they should be considered earnings. Depending on how they were allocated, earnings during the Claimant's benefit period could have the effect of reducing his benefits in certain weeks. However, this assumes that the Claimant was entitled to benefits at all. Because the Claimant was disqualified for having left his employment without just cause, he would not have been entitled to any of the benefits that he received. Therefore, the second decision could only affect the amount that the Claimant would have to repay if the Claimant's appeal of the first decision resulted in the removal of the disqualification.

[13] Whether it was fair of the Commission to take so long to make its decision was not an issue that was before the General Division. Sections 43 and 45 of the *Employment Insurance A*ct (EI Act) says that a claimant must repay any amounts paid to the claimant for any period in which he or she is disqualified or not entitled to benefits. Section 47 says that these amounts are debts owed to the Crown. Nothing in the EI Act or Regulations authorizes the General Division

to take into account the length of time it takes for the Commission to investigate and make a decision.

[14] In limited circumstances, the Commission has some discretion to write off debts owing. It does not appear that the Commission has considered whether the Claimant's circumstances may qualify and the Claimant may wish to ask the Commission about this. If the Commission were to refuse to write off the debt, the Claimant should know that the Commission has no authority to reconsider its refusal.[5] Therefore, the Clamant would not be able to appeal a write-off refusal to the General Division.[6]

[15] The Claimant does not agree with the result of the General Division and does not feel it is fair, but he has not pointed to any way in which the General Division process was unfair. He has not shown that the General Division member was biased. Nor has he shown that he could not know the Commission's arguments or evidence in advance of his hearing, or that he did not have the opportunity to effectively respond to the Commission, or present his own evidence or arguments.

[16] There is no arguable case that the General Division acted unfairly or "failed to observe a principle of natural justice".

Significant error of fact on voluntary leaving without cause

[17] The Claimant did not specifically dispute any particular finding of either of the two General Division decisions. However, in decisions such as *Karadeolian v. Canada (Attorney General)*[7], the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal.

[18] I have reviewed the appeal record searching for an arguable case that the General Division may have ignored or overlooked evidence, or made findings of fact that were inconsistent with the evidence.

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[5] Section 112.1 of the EI Act
[6] Section 113 of the EI Act (the General Division may only consider appeals from reconsideration decisions).
[7] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

[19] The General Division considered that the Claimant left his job to take a different job and it relied in part on a Record of Employment that the Claimant sent to the Tribunal.[8] The Record of Employment revealed that the Claimant's first day of work with the new employer was November 10, 2016.

[20] The General Division accepted that the Claimant could not begin his new job until completing police and security checks, obtaining the correct licence, and other administrative tasks. However, the Claimant's last day at the employment agency was May 25, 2016.[9] He did not start his new job until about five months after he left the employment agency. Therefore, the General Division did not accept that the Claimant left his job for the assurance of another job in the *immediate* future[10].

[21] The General Division found that the Claimant left his employment because the Claimant felt he was not getting enough hours of work, which it determined to be a "personal circumstance". It found that the Claimant had reasonable alternatives to leaving, which included waiting for more suitable employment. The only explanation the Claimant gave for leaving the agency was that the employment agency did not always have work and that the workplace of his most recent assignment through the agency was near to closing down.[11] He testified to the General Division that he was only getting a couple of days a week of work.

[22] Unfortunately for the Claimant, I have not discovered any evidence that was overlooked or ignored by the General Division when it found that the Claimant had the reasonable alternative of to leaving his employment.

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[8] GD5-2
[9] GD3-26
[10] A "reasonable assurance of another employment in the immediate future" is included under section 29(c) of the EI Act as one of the circumstances that must be considered (if present) in determining whether a claimant had a reasonable alternative to leaving his or her employment.
[11] GD3-50

Significant error of fact on earnings and allocation

[23] In respect of his appeal of the second decision, the Claimant stated that he did not remember his earnings from the employment agency. He could not show that what he had reported was correct. In his testimony, he agreed with the Commission's adjusted amounts.

[24] There is no arguable case that the General Division ignored or overlooked evidence when it accepted that the Claimant was paid $327.08 from his salary. There is also no arguable case that the General Division made a mistake when it allocated $178.50 to the week of May 15, 2016 and $148.58 to the week of May 22, 2016.

[25] There is no reasonable chance of success on either appeal.

CONCLUSION

[26] The application for leave to appeal is refused for both appeals.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	R. M., Self-represented