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

Citation: *T. B. v Canada Employment Insurance Commission*, 2020 SST 8

Tribunal File Number: AD-19-800

BETWEEN:

T. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Decision by: Stephen Bergen

Date of Decision: January 8, 2020

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is granted, and the appeal is allowed. The matter is referred to the General Division for reconsideration.

OVERVIEW

[2] The Applicant, T. B. (Claimant) left his job when he thought the Respondent, the Canada Employment Insurance Commission (Commission), had approved him to take a pre-apprenticeship program. The Commission later found that he had not been properly referred to the program and determined that he voluntarily left his job without just cause. The Commission also found that the Claimant was not available for work during the time that he was in the program.

[3] The Claimant appealed both these decisions to the General Division of the Social Security Tribunal. The General Division allowed one appeal, finding that the Claimant had just cause for leaving his employment. However, the General Division dismissed the second appeal and confirmed that the Claimant was not available for work at the time that he was attending the pre-apprenticeship program. The Claimant is seeking leave to appeal this second General Division decision.

[4] I allow the leave to appeal application and I am also granting the appeal at the same time. The General Division failed to observe a principle of natural justice by ignoring the Claimant's references to evidence submitted in the other General Division appeal.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] Before I may even consider whether I should allow the Appeal, 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.[1]

[6] "Grounds of appeal" means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:[2]

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 made an error of law when making its decision.
4. The General Division based its decision on an important error of fact.

[7] In this case, I have considered not only whether the Claimant could possibly win his appeal, but I have also combined the leave to appeal decision with the appeal on its merits. That means that I have considered whether the appeal should be allowed.

ISSUE

[8] Did the General Division fail to observe a principle of natural justice when it ignored the evidence submitted by the Claimant in a related General Division appeal?

ANALYSIS

Significance of evidence

[9] The Claimant argues that he submitted extensive evidence of a varied job search to the General Division in his appeal of the "just cause" decision (GE-19-2434). When the General Division considered the Claimant's availability for work in the decision now under appeal (GD-19-3149), it considered only the evidence submitted in the second appeal.

[10] The General Division found that the Claimant had not demonstrated "a sustained effort to find a suitable job" and that he had not "proven that his efforts to find a job were reasonable and

[1] 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.
[2] 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* (DESD Act).

customary." The General Division analyzed the three factors that the courts consider relevant to a claimant's availability for work.[3] It found that the Claimant did not satisfy the second factor that requires a claimant to express his desire to return to work through a job search. It also found that he did not meet the third factor, which says that a claimant shall not unduly limit his or chances of re-entering the job market.

[11] The General Division decision was substantially based on its view that the evidence of the Claimant's job search was inadequate and narrowly focused.

Notice to the General Division

[12] The question is whether the General Division breached the Claimant's right to be heard when it failed to consider the evidence that the Claimant had given another panel of the General Division in a separate appeal. In his application for leave to appeal, the Claimant referred to an additional 36 pages of job search evidence that were submitted to the Commission and were before the first General Division panel.[4]

[13] The General Division decision that is now under appeal to the Appeal Division is an appeal from the Commission's reconsideration by its June 24, 2019, decision. The original decision concerned only the Claimant's availability for work while attending his pre-apprenticeship program. It was not combined with the decision that found the Claimant did not have just cause for leaving his employment. Therefore, the issue of just cause was not before the General Division. The General Division was entitled, and required, to restrict its consideration to the Commission file and other evidence included in its own particular record.

[14] However, the Claimant argues that the General Division should have known to take this other evidence into account. He says that his notice of appeal to the General Division (GE-19-3149) included references to the previous General Division decision (GE-19-2434) and to the documentary and testimonial evidence before the General Division in the earlier hearing.[5] His

[3] The three factors are described in a Federal Court of Appeal decision called *Faucher v Canada (Attorney General)*, A-56-96
[4] AD1-7: The Claimant refers to as GD3-89 to GD3-125 of the Commission file for the first appeal
[5] AD1-6

submissions to the General Division also included a reference to an "exhaustive search of sales jobs" that he said he submitted to the first General Division appeal.[6]

[15] In my view, the General Division was on notice that the Claimant believed that the evidence before the first General Division panel would also be considered in his second General Division appeal.

The Claimant's right to be heard and answer the case

[16] In its submissions, the Commission concedes that the Claimant may have been under the perception that both files were before the General Division.

[17] I accept that the Claimant did not submit certain evidence to support his arguments because he believed that the General Division had the evidence already. I also accept that the General Division had notice that this might be the case. In the interests of natural justice, the General Division ought to have informed the Claimant that it would not be considering the evidence from the first appeal. The General Division should have given the Claimant a chance to reintroduce any documents or testimony on which he intended to rely.

[18] I make no finding as to whether the earlier panel of the General Division actually had relevant evidence that was not also before the second panel. However, in these particular circumstances, I find that the Claimant's right to be heard was affected. It was unfair of the General Division to proceed without confirming that the Claimant had provided all the evidence on which he intended to rely.

[19] The General Division erred by failing to observe a principle of natural justice.[7]

REMEDY

[20] I have the authority to change the General Division decision or make the decision that the General Division should have made.[8] I could also send the matter back to the General Division to

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[6] GD5-7
[7] Section 58(1)(a) of the DESD Act.
[8] See section 59 of the DESD Act.

reconsider its decision. The Commission has taken the position that it would not object to the matter being returned to the General Division for a new hearing.[9]

[21] I have found that the General Division process did not allow the Claimant to fully present his case. This means that the General Division has not had the opportunity to make a decision based on all the evidence, so it would not be appropriate for me to substitute my decision.

[22] Therefore, I refer the matter to the General Division for reconsideration. The Claimant should ensure that the General Division has all the evidence that he wishes it to consider, including evidence from the first General Division proceeding.

CONCLUSION

[23] The application for leave to appeal is granted and the appeal is allowed.

Stephen Bergen
Member, Appeal Division

Submissions:	T. B., Self-represented Isabelle Thiffault, for the Respondent

[9] AD2-1