



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *I. O. v Canada Employment Insurance Commission*, 2020 SST 9

Tribunal File Number: AD-19-863

BETWEEN:

I. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: January 8, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] I. O. (Claimant) worked as a social care worker for a temporary agency. In May 2019, he left his job. He applied for regular Canada Employment Insurance benefits (EI). The Canada Employment Insurance Commission disqualified the Claimant for benefits because it decided that he had voluntarily left his employment without just cause. The Claimant appealed this decision to the Tribunal and says that he was left with no choice but to quit his job because the employer had cancelled his work shifts for a month.

[3] The Tribunal's General Division dismissed the Claimant's appeal. It decided that the Claimant voluntarily left his employment, and that he did not have just cause for doing so because he refused to attend a meeting with the employer after it cancelled his shifts for one week to conduct an investigation into a workplace incident. The Claimant's request for leave to appeal is refused because the appeal does not have a reasonable chance of success under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTERS

[4] The Claimant wrote in his appeal documents that denying him EI was a violation of the *Canadian Charter of Rights and Freedoms*.¹ The Appeal Division held a Pre-hearing Conference. At this teleconference the Claimant clarified that he was not pursuing any formal claim under the Charter. This decision is made keeping Charter values in mind.

GROUNDS OF APPEAL

¹ AD1B-2

[5] The DESD Act governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) Failed to provide a fair process;
- b) Failed to decide an issue that it should have, or decided an issue that it should not have;
- c) Made an error in law; or
- d) Based its decision on an important factual error.²

[6] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. The DESD Act says that leave to appeal must be refused if the appeal does not have a reasonable chance of success.³ Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that falls under the DESD Act and on which the appeal has a reasonable chance of success.

ISSUES

[7] Does the appeal have a reasonable chance of success because

[8] The General Division based its decision on an important factual error when it stated that only one week of shifts had been cancelled;

[9] The General Division gave more weight to the employer's evidence and overlooked the Claimant's evidence;

[10] The General Division made an error in law when it decided that there was no shortage of work for the Claimant; or

² This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

³ DESD Act s. 58(2)

[11] The General Division failed to find that receipt of employment insurance benefits is an inalienable right?

ANALYSIS

Cancelled shifts

[12] First, the Claimant argues that leave to appeal should be granted because the General Division based its decision on an important factual error when it stated that only one week of work shifts had been cancelled. In order to succeed on appeal on this basis, the Claimant would have to prove three things:

- a) That the finding of fact that only one week of shifts was cancelled was an error;
- b) That the error was made perversely, capriciously or without regard for the material that was before the General Division; and
- c) That the decision was based on this finding of fact.⁴

[13] However, there was evidence that only one shift was cancelled.⁵ Therefore, it was not made in error. The appeal does not have a reasonable chance of success on this basis.

Weight given to the evidence

[14] Second, the Claimant says that leave to appeal should be granted because the General Division gave greater weight to the employer's evidence than to his. However, it is for the General Division to receive the evidence from all parties, weigh it, and make a decision based on the law and the facts. It is not for the Appeal Division to reweigh the evidence to reach a different decision.⁶ The appeal does not have a reasonable chance of success on this basis.

⁴ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

⁵ General Division decision at para. 15

⁶ *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

Shortage of work

[15] Third, the Claimant argues that leave to appeal should be granted because the General Division made an error in law when it decided that there was no shortage of work for the Claimant. However, the General Division decision was not based on any shortage of work. The General Division decision summarizes all of the evidence that was before it. It analyzed this evidence, and concluded that the employer cancelled the Claimant's shifts for one week so it could conduct an investigation.⁷ The Claimant refused to attend a meeting with the employer and quit. Also, it concluded that the Claimant had a reasonable alternative to leaving his employment: he could have attended the meeting as requested by the employer, asked for work with the employer's other clients and/or continued to work while looking for alternate employment.⁸ On this basis, it decided that the Claimant did not have just cause for leaving his employment.

[16] This ground of appeal does not point to any General Division error under the DESD Act. The appeal has no reasonable chance of success on this basis.

Employment Insurance is an inalienable right

[17] Finally, the Claimant argues that leave to appeal should be granted because the receipt of EI is an inalienable right. He provided no factual or legal basis for this ground of appeal. The purpose of EI is to provide financial assistance to those who have a temporary separation from the paid workforce. Entitlement to benefits is dependent on workplace attachment, contributions to EI, and the conditions set out in the legislation. The appeal does not have a reasonable chance of success on the basis of this argument because it does not point to the General Division having made an error in law, failing to provide a fair process or basing its decision on an important factual error.

[18] I have read the General Division decision and the documents filed with the Tribunal. The General Division did not overlook or misconstrue any important information.

⁷ General Division decision at para. 37

⁸ *Ibid.* at para. 38

CONCLUSION

[19] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	I. O., Self-represented
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