



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. H. v Canada Employment Insurance Commission*, 2020 SST 37

Tribunal File Number: AD-19-875

BETWEEN:

Z. H.

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 21, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] Z. H. (Claimant) applied for Employment Insurance (EI) sickness benefits. He later asked that these benefits be changed to regular EI benefits. The Canada Employment Insurance Commission refused to pay regular EI benefits to the Claimant because it decided that the Claimant had voluntarily left his job without just cause.

[3] The Claimant appealed the Commission's decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It also decided that the Claimant voluntarily left his job without just cause. Accordingly, he was disqualified from receiving regular EI.

[4] The Claimant now applies for leave (permission) to appeal this decision to the Tribunal's Appeal Division. The Claimant did not state any grounds of appeal under the *Department of Employment and Social Development Act* (DESD Act) in the Application to the Appeal Division. The Tribunal wrote to the Claimant, explained what grounds of appeal can be considered and asked the Claimant to provide this. The Claimant responded that he had medical documents that he sent to Service Canada that the General Division did not see, and that his employer did not allow him to return to work when he recovered from his sickness. Leave to appeal is refused because the appeal does not have a reasonable chance of success under the DESD Act.

GROUND OF APPEAL

[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.¹

[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.² 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 the General Division made an important factual error when it disregarded that the Claimant left work to care for his ailing father?

[8] Does the appeal have a reasonable chance of success because the General Division made an important factual error when it disregarded that the employer did not allow the Claimant to return to work after his illness?

[9] Does the appeal have a reasonable chance of success because the General Division failed to consider documents filed with Service Canada?

ANALYSIS

[10] One ground of appeal that I can consider is whether the General Division based its decision on an important factual error. In order to succeed on appeal on this basis, the Claimant must prove three things:

- a) That a finding of fact was erroneous (in error);

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

² DESD Act s. 58(2)

- b) That the finding 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.³

The Claimant's grounds of appeal are examined below in this context.

The Claimant cared for his father

[11] The Claimant says that he left work because he had to care for his ailing father, who has cancer and a number of physical limitations. The General Division considered this. The decision summarizes the Claimant's evidence regarding this, including that he had to take his father to appointments and care for him.⁴ It also states that a person will have just cause to leave their employment for this reason, but they must exhaust all reasonable alternatives before becoming unemployed.⁵ The General Division found as fact that the claimant had not exhausted all reasonable alternatives.⁶

[12] There was an evidentiary basis for these findings of fact. Therefore, they were not made in error. The appeal does not have a reasonable chance of success on this basis.

The Employer would not allow the Claimant to return to work

[13] The Claimant also says that the General Division made an important factual error because it failed to consider that the employer would not allow him to return to work. However, the General Division considered this, and decided to give more weight to the employer's evidence on this issue.⁷ There is an evidentiary basis for its conclusion that the Claimant did not contact the employer in a timely way or provide medical notes as required. Leave to appeal cannot be granted on this basis.

³ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

⁴ General Division decision at para. 40, 42

⁵ General Division decision at para. 43

⁶ *Ibid*, at para. 44.

⁷ General Division decision at para. 32 and following

Documents filed with Service Canada

[14] Finally, the Claimant says that he sent documents to Service Canada that the General Division did not consider. He did not specify what these documents are. It is for each party to present their case to the Tribunal by filing documents and giving testimony at the hearing. The General Division cannot be faulted for not considering a document that one party did not file with the Tribunal. In addition, the General Division is presumed to have considered all of the evidence that is before it, and need not mention each document in its decision.⁸ The appeal does not have a reasonable chance of success on this basis.

[15] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that it made an error in law or that it failed to provide a fair process.

CONCLUSION

[16] Leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	Z. H., Self-represented
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⁸ *Canada v. South Yukon Forest Corporation*, 2012 FCA 165