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

Citation: *A. M. v Canada Employment Insurance Commission*, 2020 SST 247

Tribunal File Number: AD-20-114

BETWEEN:

A. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: March 19, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Claimant, A. M., has applied for leave (or permission) to appeal the General Division decision in her case. Unfortunately, I must deny her application. These are the reasons for my decision.

OVERVIEW

[2] The Claimant was in school and working part-time at a grocery store. She worked about 15 hours per week. When the summer arrived, the Claimant wanted to work more hours because she needed extra money for university.

[3] The Claimant managed to find a full-time summer job working at a local sports field. However, it was impossible to manage the two jobs at the same time. So she weighed her options and quit the job at the grocery store.

[4] When she was laid off at the end of the summer, the Claimant applied for Employment Insurance (EI) regular benefits. But the Canada Employment Insurance Commission refused her application. It said that she had left her job at the grocery store without "just cause".[1] As a result, the Commission disqualified her from receiving EI benefits.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division, but she was unsuccessful. Now, the Claimant wants to appeal the General Division decision to the Tribunal's Appeal Division. For the file to move forward, however, she needs leave to appeal.

[6] Unfortunately for the Claimant, I have concluded that her appeal has no reasonable chance of success. As a result, I must refuse leave to appeal.

---

[1] In this context, "just cause" has a very specific meaning. It is defined in section 29(c) of the *Employment Insurance Act* (EI Act). Section 30 of the EI Act establishes the Commission's powers to disqualify claimants from receiving EI benefits.

ISSUE

[7] Did the General Division base its decision on an error of fact when it concluded that the Claimant had not attempted to resolve her workplace concerns with her employer?

ANALYSIS

[8] The Tribunal follows the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, this appeal is following a two-step process: the leave to appeal stage and the merits stage.

[9] The legal test that the Claimant needs to meet at the leave to appeal stage is a low one: Is there any arguable ground on which the appeal might succeed?[2] To decide this question, I must focus on whether the General Division could have committed any relevant errors. In simple terms, the relevant errors concern whether the General Division:[3]

a) acted unfairly;

b) exercised all its powers, without going beyond the limit of its powers;

c) applied the law incorrectly; or

d) based its decision on an important error concerning the facts of the case.

The General Division did not base its decision on an important error concerning the facts of the case

[10] In this case, the Commission concluded that the Claimant had voluntarily left her job at the grocery store without just cause. As a result, it disqualified the Claimant from receiving EI benefits, as described under section 30 of the *Employment Insurance Act* (EI Act).

[11] "Just cause" was the main issue in the case. In other words, having regard to all the circumstances, did the Claimant have any reasonable alternative to leaving her job when she

---

[2] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[3] The precise errors, formally known as grounds of appeal, are listed under section 58(1) of the DESD Act.

did?[4] Section 29(c) of the EI Act provides a list of relevant circumstances for the General Division to consider, though it was obliged to consider any other relevant circumstances too. Here, the focus was on section 29(c)(vi) of the EI Act: Did the Claimant have the reasonable assurance of another job in the immediate future?

[12] In paragraph 18 of its decision, the General Division decided that section 29(c)(vi) could not help the Claimant in the circumstances of her case. That is because she left a permanent position for one that lasted just eight weeks.

[13] According to the General Division, it did not matter that the Claimant was working an additional 20 hours per week at the second job or that she would have quit the first job in the fall anyway. What mattered most to the General Division was the certainty that the Claimant would be unemployed at the end of her summer job.

[14] As part of its decision, the General Division also considered what reasonable alternatives the Claimant had open to her instead of leaving her job at the grocery store. Specifically, it found that the Claimant could have tried to resolve her concerns with her employer.[5]

[15] The Claimant disputes this finding. She argues that she raised her concerns with her supervisor and with the store manage in early 2019. She asked the store manager if she could move departments because her shifts sometimes interfered with her school responsibilities. But nothing changed. Why, the Claimant asks, does it matter that she raised her concerns in early 2019 instead of a few months later, in June ?

[16] There are two reasons, in my view, why this argument does not amount to an arguable ground on which the appeal might succeed.

[17] First, the General Division's conclusion was clearly open to it based on the evidence. The General Division acknowledged the conversations that had occurred between the Claimant and her employer in early 2019. However, those conversations were about accommodating the Claimant's school schedule. By June 2019, however, the Claimant's classes were at an end.

---

[4] *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[5] General Division decision at para 24.

Instead, she quit because of a lack of hours. Yet that is not something that she had discussed with her employer.

[18] In other words, the General Division's concern was not just about the timing of the conversations between the Claimant and her employer, but about the content of those conversations too.

[19] Second, the General Division's reasonable alternatives analysis, which started at paragraph 18 of its decision, was not essential to its conclusion.

[20] Earlier in its decision, the General Division referred to binding decisions from the Federal Court of Appeal.[6] In those decisions, the court described how the notion of "no reasonable alternative" is difficult to apply in cases where a person is moving from one job to another. It also concluded that the EI system cannot be used to finance personal decisions, even when motivated by a desire to better one's self, improve working conditions, or earn more money.

[21] As a result, it might have made perfect sense for the Claimant to leave her first job in favour of the second one. When viewed through the lens of the EI system, however, the Claimant could not justify leaving a permanent job in favour of one that would last just two months. In other words, the Claimant did not have "just cause", at least not in the way that the courts have interpreted the term.

[22] The General Division did not have to go on to consider the Claimant's other possible reasonable alternatives, like speaking with her employer. According to the Federal Court of Appeal decisions mentioned above, one sufficient and obvious alternative was simply for the Claimant to keep her permanent job.

[23] Aside from the Claimant's arguments, I also reviewed the file and examined the decision under appeal. In short, the General Division set out the correct legal test and identified the key factor, which was the brief nature of the Claimant's summer job.

---

[6] *Canada* (*Attorney General*) *v Langlois*, 2008 FCA 18 and *Canada* (*Attorney General*) *v Campeau*, 2006 FCA 376.

[24] The evidence supports the General Division's decision. In addition, my review of the file did not reveal relevant evidence that the General Division might have ignored or misinterpreted.[7] Finally, the Claimant has not argued that the General Division acted unfairly in any way.

[25] As a result, the Claimant's appeal has no reasonable chance of success.

CONCLUSION

[26] I sympathize with the Claimant's circumstances. Nevertheless, I have concluded that her appeal has no reasonable chance of success. I have no choice, then, but to refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	K. C., for the Applicant

[7] Federal Court decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615 say that I should normally grant leave to appeal if the General Division might have ignored or misinterpreted relevant evidence. This is true even if there are problems with the claimant's written documents.