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

Citation: *DA v Canada Employment Insurance Commission*, 2021 SST 205

Tribunal File Number: AD-21-157

BETWEEN:

D. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: May 17, 2021

Canada

DECISION AND REASONS

DECISION

[1] I am refusing the application for leave to appeal

OVERVIEW

[2] The Applicant, D. A. (Claimant), started working at a masonry job (M) on December 13, 2017, and quit M the same day. He applied for Employment Insurance benefits in late 2018.

[3] The Claimant's entitlement to benefits depended in part on how many hours of insurable employment he had. When the Respondent, the Canada Employment Insurance Commission (Commission) calculated the Claimant's benefits, it did not use any of the Claimant's hours of insurable employment from before he quit M. This was because the Commission decided that the Claimant chose to quit M and did not have "just cause" for doing so. The Claimant disagreed and asked the Commission to change its decision.

[4] The Commission would not change its decision so the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed the Claimant's appeal and the Claimant is now asking for leave (or permission) to appeal to the Appeal Division.

[5] I am denying leave to appeal because the Claimant does not have a reasonable chance of success. He has not made out an arguable case that the General Division acted unfairly or outside its jurisdiction, or that it made any other error.

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 an arguable case. This would be some argument that the Claimant could make and possibly win.[1]

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[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.

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

ISSUES

[8] Is there an arguable case that the General Division failed to observe a principle of natural justice (acted unfairly)?

[9] Is there an arguable case that the General Division made an error of jurisdiction?

[10] Is there an arguable case that the General Division made an error of fact or law?

ANALYSIS

Issue 1: Natural Justice

[11] There is no arguable case that the General Division made an error by failing to observe a principle of natural justice.

[12] Natural justice refers to the fairness of the *process*. It includes procedural protections such as a person's right to be heard and to know the case against him or her, and the right to have an unbiased decision-maker.

[13] The Claimant said that the General Division did not make a fair judgment. I understand that he disagrees with the General Division's decision and feels that the result is unfair. However, he has not identified how the appeal process treated him unfairly.

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[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.*

[14] The Claimant has not asserted that he did not have adequate notice of the General Division hearing or that he had a problem with the pre-hearing disclosure or exchange of documents. He has not complained about the manner in which the General Division conducted the hearing or said that he did not understand the process. Nor has the Claimant raised a particular concern with any other action or procedure that could have affected his right to be heard or to answer the case.

[15] Finally, the Claimant has not suggested that the General Division member did or said anything that would lead him to believe that the member was biased or that she had prejudged the matter.

Issue 2: Jurisdiction

[16] There is no arguable case that the General Division made an error by refusing to exercise its jurisdiction or by acting beyond its jurisdiction.

[17] The General Division needed to decide two issues. First, it needed to decide if the Claimant voluntarily left his employment. The General Division decided that the Claimant left his job.

[18] Second, it needed to decide if the Claimant had just cause for leaving his employment. According to the law, "just cause" for leaving employment can only exist where a claimant has no reasonable alternative to leaving. The General Division decided that the Claimant did not have just cause because he had reasonable alternatives to leaving.

[19] The General Division considered and reached a decision on the only issues it needed to decide. Therefore, it did not refuse to exercise its jurisdiction.

[20] The General Division did not try to decide any issues other than the two arising from the reconsideration decision. Therefore, it did not act beyond its jurisdiction.

Issue 3: Important error of fact or error of law

[21] The only ground of appeal selected by the Claimant involves his assertion of a natural justice or jurisdictional error. He did not argue that the General Division made an important error of fact or an error of law.

[22] However, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal when it considers leave to appeal applications from self-represented parties like the Claimant.[3] In accordance with the direction of the Federal Court, I have reviewed the appeal record for any finding that may have ignored or misunderstood significant evidence. I have also considered whether any error of law is readily apparent.

[23] There is no arguable case that the General Division made an important error of fact or an error of law. The General Division weighed the evidence and found that the Claimant did not have just cause for leaving his employment.

[24] The law says that a claimant is disqualified from receiving benefits if he or she voluntarily leaves employment without just cause. "Just cause" can only exist where a claimant has no reasonable alternative to leaving. To decide whether a claimant has no reasonable alternative, the General Division must consider all the relevant circumstances. [4]

[25] When a claimant is disqualified because he or she has left employment without just cause, the claimant cannot use hours of insurable employment from before her or she left, for the purpose of later qualifying for benefits. [5] Likewise, the Commission cannot use those hours to determine the maximum number of weeks of benefits or the rate of benefits.[6]

[26] When the General Division found that the Claimant voluntarily left his employment, it noted that the Claimant agreed that he quit his job. It also said that there was no evidence to the contrary. The General Division referenced the Record of Employment, which stated that the Claimant quit.[7] It could also have referenced his explanation form,[8] his statements of November 23 and November 28,[9] and his final statement in connection with his reconsideration request[10]. In each of these statements, the Claimant said he quit.

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[3] See, for example, the decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.
[4] *Employment Insurance Act*, section 29(c).
[5] EI Act, section 30(5).
[6] EI Act, section 30(6).
[7] GD3-22, at box 16 of ROE.
[8] GD3-26.
[9] GD3-30 and GD3-31
[10] GD3-43.

[27] However, the Claimant also said he was "let go" in his reconsideration request and in his first statement to the Commission that followed the reconsideration request.[11] This would seem to be evidence to the contrary. However, at the Claimant's hearing, the General Division member questioned him about what he had meant by "let go." The Claimant responded that his employer had not fired him but that it encouraged him to find an easier job if he could not manage this job's demands.[12]

[28] In light of this explanation, the General Division did not make an error by saying that there was no evidence that the Claimant had not quit his job.

[29] Next, the General Division considered the circumstances in which the Claimant quit. The General Division accepted that the Claimant quit because he felt the work was too hard and that his co-workers were ridiculing him because he would not work faster. These are findings of fact based on the Claimant's own statements and testimony. The Claimant did not say that any other relevant circumstance influenced his decision. There is no arguable case that the General Division misunderstood or ignored evidence about the Claimant's circumstances.

[30] There is also no arguable case that the General Division made an error of fact related to the Claimant's reasonable alternatives to leaving. The General Division found that the Claimant had the reasonable alternative of talking to the employer and bringing up his concerns about the work duties or environment.

[31] The Claimant's evidence was inconsistent about whether he spoke to the employer before he quit about his reasons for quitting. However, the General Division did not ignore or misunderstand any of the Claimant's evidence. The General Division just gave more weight to the Claimant's earlier statements when it found that he had not spoken to the employer. The General Division justified this finding by saying that those statements were nearer to the time when he quit and he likely had a better recollection of events. The General Division was entitled to weigh the evidence as it saw fit. This is the General Division's role. It is not my role to re-evaluate or reweigh the evidence.[13]

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[11] GD3-35, GD3-40.
[12] Audio recording of General Division hearing at timestamp 00:06:22.
[13] *Bergeron v. Canada (Attorney General)*, 2016 FC 220. *Hideq v. Canada (Attorney General)*, 2017 FC 439.

Summary

[32] The General Division found that the Claimant was disqualified from receiving regular Employment Insurance benefits because he voluntarily left his job without just cause. This means that the hours of insurable employment that he accumulated before he left cannot be used to calculate his benefits.

[33] The Claimant may disagree with how the General Division assessed the evidence or with its conclusions, but I can only consider whether the General Division has made an error under the grounds of appeal. The General Division considered and properly understood the evidence and it applied the law correctly.

[34] The Claimant has no reasonable chance of success in this appeal.

CONCLUSION

[35] I am refusing leave to appeal.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	D. A., Self-represented