Federal Court Cour fédérale

Date: 20200325

Docket: T-1186-19

Citation: 2020 FC 423

Ottawa (Ontario), March 25, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

CLINTON KEAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Clinton Kean (the Applicant) seeks to overturn the decision of the Social Security Tribunal – Appeal Division, which found that his complaint about the denial of his employment insurance benefits could not proceed because it did not have a reasonable chance of success.

[2] The Appeal Division found that the General Division of the Social Security Tribunal had considered all of the evidence and arguments presented, and it had properly applied the law. It concluded that the Applicant's appeal therefore has no chance of success, and denied his request for leave to appeal.

[3] For the reasons set out below, I am dismissing this application. Although I am sympathetic to the situation of the Applicant, I am not persuaded that the Appeal Division's decision is unreasonable.

I. Context

[4] The basic facts are not disputed between the parties. The Applicant worked as a long haul truck driver for a company based in Ontario. He had just graduated from training school, and after one month of training, he went out on the road.

[5] The Applicant said the working conditions were difficult, for a number of reasons. He drove the maximum number of hours permitted, and after he paid his expenses for his cellphone data usage and meals, he was not left with much money, so he continued to work as much as he could. He often drove into the United States, and the exchange rate on the Canadian dollar further reduced his take-home pay. The Applicant also found it difficult to be on the road by himself, away from family and friends. By the time he had decided to quit his job, the Applicant said he had "trucker burnout," and when he returned home, his family said he was not acting like himself.

[6] The Applicant said his main reason for leaving his job was that his boss never dealt with his repeated complaints about the exhaust fumes in the cab of his truck, which he says were caused by a leak in the exhaust system. The Applicant says that when he raised this with his boss he was promised that the truck would be repaired, but that never happened. This worried him more and more, because he was living in the truck most of the time. He had to leave the engine

running to operate the air conditioning when he slept in the cab, and so his anxieties built up because the problem with the exhaust fumes was never addressed.

[7] The Applicant took two weeks off work, and as he was driving back to Ontario the truck broke down. He managed to get the truck to a garage, but then decided to quit his job because he feared what the job and working conditions were doing to him.

[8] The Applicant applied for Employment Insurance, and the form indicated that his rationale for leaving the job was excessive working hours. The Canada Employment Insurance Commission denied his claim, because it determined he voluntarily left his employment without just cause. The Applicant applied for reconsideration, and he raised the issue of the exhaust fumes and their impact on him, but the Commission upheld its decision.

[9] The Applicant then appealed to the Social Security Tribunal – General Division. The General Division reviewed the evidence and concluded that the Applicant had voluntarily left his employment. It found that the Applicant's employer had refused his request to be laid off, but had agreed that he could take some time away to figure out what was going on with himself. Rather than taking this offer of time away, the Applicant decided to leave his employment.

[10] The General Division then found that the Applicant did not have just cause to leave his employment. It noted the legal definition of "just cause," which is that the employee had no reasonable alternative to leaving the employment, having regard to all of the circumstances. The General Division reviewed the evidence of the Applicant regarding the exhaust fumes in the truck, the long hours, and pressure he worked under, as well as his medical conditions and his efforts to maintain his own mental health in the face of all of the job pressures and concerns. The

General Division also reviewed the employer's evidence, including the maintenance and repair record for the truck the Applicant drove, and the testimony of the co-worker who picked up the truck after the Applicant left his job to the effect that there was no problem with exhaust fumes. Based on the evidence, the General Division found that the Applicant had not established that leaving his employment because of his concerns about the exhaust leak was the only reasonable alternative open to him.

[11] The General Division concluded its decision by discussing the difference between what a person may believe to be good cause to leave a job, and the legal concept of just cause. It is worth quoting this part of the decision:

> [28] There is a distinction between the concepts of "good cause" and "just cause" for voluntarily leaving. It is not sufficient for a claimant to prove they were reasonable in leaving their employment; reasonableness may be good cause but it is not just cause. It must be shown that, after considering all of the circumstances, the claimant had no reasonable alternative to leaving their employment. The words "just cause" are not synonymous with "reason" or "motive." Although the Claimant may have felt he had a good reason to voluntarily leave his employment, a good reason is not necessarily sufficient to meet the test for "just cause."
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> [Citations omitted.]

[12] Based on its review of the evidence, considered against the legal test for just cause, the General Division found that the Applicant's decision to leave his employment did not meet the test of just cause to voluntarily leave employment as required by the law. It therefore dismissed his appeal.

[13] The Applicant then filed an appeal to the Social Security Tribunal – Appeal Division. This appeal was dismissed. The Appeal Division found that the General Division had correctly

applied the legal tests and considered all of the evidence and arguments put forward by the Applicant. Therefore, the Appeal Division concluded that the Applicant should not be granted leave to appeal, because his appeal did not have a reasonable chance of success.

[14] The Applicant has applied for judicial review and seeks to overturn the decision of the Appeal Division.

II. Issues and Standard of Review

[15] The only issue that arises in this case is whether the decision of the Appeal Division is reasonable. The Applicant does not claim an error of law, and although he said there had been a breach of procedural fairness, he did not provide any specific example of how the Appeal Division had failed to treat him fairly and so I will not discuss this further.

[16] The standard of review that applies is reasonableness. This was determined in previous cases (*Andrews v Canada (Attorney General)*, 2018 FC 606 at para 17), and is consistent with the decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], in particular in light of section 68 of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*Act*]. This confirms that there is no appeal from a decision of the Appeal Division, and so the only remedy available is an application for judicial review.

[17] There are many dimensions to review under the reasonableness standard as articulated in *Vavilov* and applied in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*]. The most important guideposts for this case are that the review must begin with the reasons for decision, and assess whether the decision-maker (here the Appeal Division)

applied the right law to the important facts of the case, and whether its chain of reasoning is internally coherent and rational. Put another way, the relevant law and the key facts of the case establish the space within which the decision must be made (*Vavilov* at paras 85, 99; *Canada Post* at para 31). If a review indicates that the decision-maker went outside of that box, by applying the wrong law or not taking into account the most important relevant facts, then the decision may be found to be unreasonable.

[18] In addition, the process of analysis must show that the decision is justified. This includes whether a reviewing court can follow the internal logic of the decision and understand how the decision-maker came to its conclusion (*Vavilov* at paras 81, 85). Put simply, the reasons in support of the conclusion must "add up" in light of the facts and the law. One way of describing this was set out by Justice Donald Rennie in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraph 11, when he stated that a reasonable decision is one where a reviewing court can "connect the dots on the page [so that] the lines, and the direction they are headed, may be readily drawn." If there are no dots, or their direction is not clear, then the decision may well be found to be unreasonable.

[19] With this background, I will turn to a consideration of the Applicant's arguments against the Appeal Division's decision.

III. Analysis

[20] The ground of appeal the Applicant relied on was that the General Division had made "an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it" (*Act* at para 58(1)(c)). The Applicant argued that the General Division

decision failed to take into account the job's overall impact on his mental and physical health. He did not report the exhaust problems with the truck to the Department of Transport because he respected the owner of the trucking company and he believed that the problem would be fixed. When that was not done, and after working so many hours, he knew that he needed to quit. The Appeal Division did not examine this aspect of the matter.

[21] In addition, the Applicant obtained a document from Transport Canada that labels an exhaust leak within the cab of a transport truck as a hazardous condition. He submitted this to the Appeal Division, but they did not consider it in making their decision. He also says that he found out that the truck did have a hole in an exhaust pipe, but he does not have any proof of that fact. In addition, he says that the co-worker later told him that he did not recall the condition of the truck when he picked it up, but again, he has no proof of this. He also indicated that neither of these points were put before the General Division before it made its decision.

[22] The Respondent argues that the General Division decision is thorough and detailed, and it addresses all of the evidence and arguments put forward by the Applicant. It examined the evidence about the exhaust leak, as well as the overall working conditions and their impact on the Applicant. The General Division specifically noted the differences between what a person believes may be a good reason to leave their employment and the narrower legal definition of just cause for voluntarily leaving employment. The Appeal Division had no legal basis to overturn the General Division's decision, and this Court has no grounds to interfere in the Appeal Division's decision.

[23] I have carefully reviewed the Applicant's arguments as well as the evidence he put forward to support his claim before the General Division and the Appeal Division. For the following reasons, I am unable to find that the Appeal Division's decision is unreasonable.

[24] It is important to recall that judicial review on the standard of reasonableness involves assessing whether the decision-maker applied the right law to the essential facts, and whether its decision reflects a chain of reasoning that is logical and coherent. Was the decision within the right legal and factual box, and did it explain, in a rational and coherent way, how it got to the result? Does the reasoning "add up" in light of the law and the facts?

[25] Applying this to the case before me, I find that the decision is reasonable. The Appeal Division applied the correct legal test on the question of whether to grant leave to appeal. It took into account the facts that were before it, and its analysis is clear and coherent.

[26] The Applicant argues that the Appeal Division's findings of fact are unreasonable, but I am not persuaded. The General Division decision addressed all of the evidence that was before it. Although the Applicant produced a document from Transport Canada that indicates that exhaust leaks in truck cabs can constitute dangerous working conditions, this was not put before the General Division. On the record before it, the General Division found that the evidence simply did not support his claim that there was a leak. The Appeal Division found no basis to overturn this decision, and this conclusion is reasonable.

[27] The Applicant produced pictures of the truck he was driving, showing black marks on the engine near the exhaust manifold. These were in evidence before the General Division and were part of the record before the Appeal Division. We must presume that these pictures were

considered. However, it is clear that the General Division also considered the evidence from the owner and the co-worker, and it concluded that the Applicant had not demonstrated that there was an exhaust leak. Based on the evidence and arguments submitted, the Appeal Division did not find that this was "an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it" (*Act* at para 58(1)(c)). I can find no basis to overturn this finding.

[28] I am also not persuaded that either the General Division or the Appeal Division failed to consider the overall impact of the job on the Applicant's physical and mental health. The decisions acknowledge this, but do not find that it satisfied the legal test for just cause to voluntarily leave employment. The General Division noted that the Applicant had a number of alternative ways to try to deal with this, and this finding is based in the evidence. The Appeal Division found no grounds to interfere with this finding, but that does not mean that the impact of the job on the Applicant was not taken into account.

[29] While I understand why the Applicant feels that the decision does not reflect his evidence and arguments, this is not a basis for finding that the Appeal Division's decision is unreasonable, as that term is defined by the law.

IV. Conclusion

[30] For all of these reasons, I am dismissing the application for judicial review.

[31] The Respondent did not seek its costs, and so no costs are awarded.

[32] I would like to express my appreciation to the Applicant for his submissions, and for his answers to my questions at the hearing. I would also like to express my appreciation to counsel for the Respondent for her helpful submissions and professional and courteous approach to this matter.

[33] As agreed at the hearing, the style of cause is hereby amended, with immediate effect, to name the Attorney General of Canada as Respondent, in accordance with Rule 302(2) of the *Federal Courts Rules*, SOR/98-106.

JUDGMENT in T-1186-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

3. The style of cause is amended, with immediate effect, to name the Attorney General of Canada as Respondent.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1186-19
STYLE OF CAUSE:	CLINTON KEAN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	WABUSH, NL
DATE OF HEARING:	MARCH 10, 2020
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	MARCH 25, 2020

APPEARANCES:

Clinton Kean	FOR THE APPLICANT ON HIS OWN BEHALF
Sarah Drodge	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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