

Federal Court



Cour fédérale

Date: 20210419

Docket: T-1749-18

Citation: 2021 FC 334

Ottawa, Ontario, April 19, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KAMALPREET KALOTI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] At the conclusion of the oral hearing the parties were informed that the Court would be dismissing this application, with reasons to follow.

[2] The Applicant is seeking judicial review of a decision by the Social Security Tribunal Appeal Division [SST-AD] that refused her application for leave to appeal the decision of the Social Security Tribunal General Division [SST-GD]. The SST-GD upheld a decision of the

Canada Employment Insurance Commission [Commission] denying her the benefits she had claimed and which were paid, and imposing a penalty.

[3] On March 9, 2016, the Applicant applied for employment insurance claiming 15 weeks of maternity benefits and 35 weeks of parental benefits [the EI Claim]. A Record of Employment [ROE] had been issued and submitted to the Commission by Jagg Electric Ltd. [Jagg Electric]. It indicated that the Applicant had worked for Jagg Electric from October 19, 2015, to February 19, 2016, and had accumulated 879 insurable hours.

[4] Initially, the Commission approved the Applicant's claim and paid her 15 weeks of maternity benefits. The Commission stopped all further payments on or around June 17, 2016, after investigating whether the Applicant had actually worked for Jagg Electric. The Commission concluded that the Applicant did not work any of the 879 insurable hours stated on her ROE and accordingly voided her claim. This resulted in an overpayment of 15 weeks of benefits or \$3,945.00. A monetary penalty of \$5,000 was also levied under section 38 of the *Employment Insurance Act*, SC 1996, c 23, for misrepresentation. A request to the Commission for reconsideration was denied.

[5] The SST-GD dismissed the Applicant's appeal of the Commission's decision. It did reduce the monetary penalty to \$4,500.

[6] The SST-GD found inconsistencies in the Applicant's evidence and also found that she was unable to respond to simple work-related questions that an employee at Jagg Electric would

likely have known. For example, the SST-GD noted that she said that her responsibilities included calling customers to remind them to pay their bills; however, she had difficulty naming the clients and suppliers. She stated that she had worked more than 40 hours a week and as late as 6:00 or 7:00 p.m.; however, she had difficulty describing the workplace and other employees, and her husband stated that she never worked more than 10 hours in the day. Additionally, the Applicant's cell phone records showed that her cell phone was rarely in the vicinity of the alleged employer's address. Banking records showed that she deposited her paycheques and then frequently withdrew the same or nearly same amount of cash. She and her husband testified that they sent the money by cash to her family in India; however, they had no records to prove those payments actually occurred and the organization they claimed to use for this purpose had no record of them completing any transactions. The Commission's investigation concluded that it was more probable that the Applicant returned the cash to the alleged employer as part of a scheme to establish insurable employment so that she could claim EI benefits.

[7] The Applicant's lack of credibility was the determinative factor for the SST-GD. On appeal to the SST-AD, it found that there was sufficient evidence on the record to ground the findings of the SST-GD. It held that the SST-GD understood the Applicant's evidence and it acknowledged her explanations for the inconsistent statements. The Applicant's leave to appeal was refused on the basis that it did not have a reasonable chance of success.

[8] On this application for judicial review a single issue has been raised by the Applicant. She submits that the SST-AD erred in failing to find the SST-GD had acted outside of its jurisdiction. Specifically, she submits that the SST-GD made extensive findings of fact that

relate to her insurable earnings while working at Jagg Electric. Under section 64 of the *Department of Employment Social Development Act*, SC 2005, c 34, the SST-GD and the SST-AD may decide any question of law or fact necessary for the just disposition of the matter before it, except for those questions that are specified in section 90 of the *Employment Insurance Act*, SC 1996, c 23. That section and section 90.1 read as follows:

90 (1) An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

- (a) whether an employment is insurable;
- (b) how long an insurable employment lasts, including the dates on which it begins and ends;
- (c) what is the amount of any insurable earnings;
- (d) how many hours an insured person has had in insurable employment;
- (e) whether a premium is payable;
- (f) what is the amount of a premium payable;
- (g) who is the employer of an insured person;
- (h) whether employers are associated employers; and
- (i) what amount shall be refunded under subsections 96(4) to (10).

...

90.1 If a question specified in section 90 arises in the consideration of a claim for benefits, a ruling must be made by an authorized officer of the Canada Revenue Agency, as set out in that section.

[9] The Applicant says that the issue before this Court must be reviewed on the standard of correctness because it concerns a question of jurisdictional boundaries between two or more administrative bodies. The Respondent submits that the standard of review is reasonableness. It

says that this is not a matter of jurisdictional boundaries between the Social Security Tribunal and the CRA. Rather, the question is whether the SST-AD acted reasonably and within its statutory grant of power when it denied leave to appeal.

[10] I agree with the position of the Respondent that this matter is reviewable on the standard of reasonableness; however, even if the standard were correctness, this application cannot succeed.

[11] In her memorandum of fact and law, the Applicant asserts that the “Appeal Division made findings that the General Division had acted outside of its jurisdiction yet concluded that there was no reasonable chance of success in finding that the General Division had acted beyond its jurisdiction.” In oral submission, it was admitted that there was no finding by the SST-AD that the SST-GD had acted outside of its jurisdiction.

[12] Nonetheless, the Applicant submits that the SST-GD made “extensive findings of fact that relate to how many insurable hours the Applicant had worked at Jagg Electric.” I do not agree.

[13] The SST-GD addressed four issues. Only the first two are relevant to dispose of this application. They are: (1) Did the Appellant work for Jagg Electric, and (2) Does the Appellant qualify for benefits?

[14] The SST-GD found on the balance of probabilities that the Appellant did not work for Jagg Electric. At paragraph 55 of its decision, it writes:

Considering and weighing all the evidence, I find that the Appellant is simply not credible. I find, on the balance of probabilities, that the Appellant did not work for Jagg Electric.

[15] The SST-GD then went on to consider whether she had any other employer or any other insurable hours and concluded that she did not:

The Appellant has not submitted any evidence demonstrating that she had any other employer or any other insurable hours. I have already found that the Appellant did not work for Jagg Electric, and so I find that the Appellant has failed to prove that she has any hours of insurable employment. With no hours of insurable employment, the Appellant cannot qualify for benefits, and so I find that the Commission must cancel the benefit period.

[16] I find that the SST-AD made no reviewable error.

[17] There is a distinction between “employment” and “insurable employment” in the relevant legislation. The CRA only has jurisdiction under section 90 of the *Employment Insurance Act* if there is employment. A contextual reading of section 90 makes this clear. It has no jurisdiction to make any decision as to whether there is in fact employment – it is presumed that there is employment.

[18] Here the Commission and then the SST-GD determined that there was never any employment with Jagg Electric. That is a matter fully within its jurisdiction and expertise.

[19] As there was no jurisdictional error, the decision of the SST-AD concluding that there was no reasonable likelihood of success on appeal is unassailable.

[20] The Respondent advised the Court that the Attorney General was not seeking costs.

JUDGMENT IN T-1749-18

THIS COURT'S JUDGMENT is that this application is dismissed, and each party shall bear its own costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1749-18

STYLE OF CAUSE: KAMALPREET KALOTI v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO, TORONTO, ONTARIO AND
SURREY, BRITISH COLUMBIA

DATE OF HEARING: APRIL 8, 2021

JUDGMENT AND REASONS: ZINN J.

DATED: APRIL 19, 2021

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