

Citation: *Canada Employment Insurance Commission v. A. A.*, 2015 SSTAD 368

Appeal No. AD-14-460

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**A. A.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 19, 2015

## **DECISION**

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On August 1<sup>st</sup>, 2014, the General Division of the Tribunal determined that:

- With respect to voluntarily leaving his employment, the Respondent was unaware that he was dismissed until September 25, 2013, which is four weeks after he submitted his letter to HR.

[3] The Applicant requested leave to appeal to the Appeal Division on August 21, 2014.

## **ISSUES**

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

## **THE LAW**

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the “*DESD Act*”), “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *DESD Act* provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## **ANALYSIS**

[7] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant submits that the SST-GD made an error in fact and in law in allowing the appeal of the Respondent.

[10] The Applicant submits that jurisprudence supports that an employee who decides to continue with studies which limit availability are considered to have voluntarily left employment. Given the facts of this case in relation to the legal test for just cause pursuant to s. 29(c) *Act*, a reasonable conclusion is that the Respondent had the alternative of remaining employed.

[11] The Applicant further argues that the Respondent may have made a good personal choice to choose his school schedule over that of his employment, however, good personal reasons do not amount to just cause and the EI fund should not have to bear the burden of the Respondent's decision.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[13] The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[14] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division