

Citation: *Canada Employment Insurance Commission v. A. P.*, 2015 SSTAD 372

Appeal No. AD-14-491

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

A. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

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 22, 2014, the General Division of the Tribunal determined that:

- The Respondent left his employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on September 11, 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 based its decision on an erroneous finding of fact that it made in a perverse or capricious manner and its decision is not reasonable. It argues that the evidence clearly shows that at the time the Respondent voluntarily left he had no bona fide offer of employment but only the possibility that he could secure work when he arrived in PEI. The Respondent voluntarily left his employment in June, 2012 and at the time of filing in October 2012 he had still not secured work.

[10] The Applicant submits that when applying the legislation and based on jurisprudence, the Respondent has failed to meet the test for just cause. He had the reasonable alternative of remaining employed in Toronto until such time as he secured work in PEI (*Canada (AG) v. Graham*, 2011 FCA 311).

[11] 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.

[12] 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

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

Pierre Lafontaine

Member, Appeal Division