

**Citation: *Canada Employment Insurance Commission v. K. M.*, 2015 SSTAD 842**

**Date: July 3, 2015**

**File number: AD-13-1169**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**K. M.**

**Respondent**

**Decision by: Shu-Tai Cheng, Member, Appeal Division**

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (Tribunal) for leave to appeal the decision of the Board of Referees (Board) issued on April 3, 2013. The Board allowed the claimant's appeal where the Commission had determined that the claimant voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (EI Act) and, subsequently, imposed a disentitlement for failing to prove his availability.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on April 23, 2013.

### ISSUE

[3] The Tribunal must decide whether the appeal has a reasonable chance of success.

### THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (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".

[5] 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".

[6] 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.

[7] For our purposes, the decision of the Board is considered to be a decision of the General Division.

## **SUBMISSIONS**

[8] The Applicant submitted in support of the Application that:

- a) the Board erred in law in making its decision, when it failed to apply the legal test for voluntarily leaving: no reasonable alternative to leaving having regard to all the circumstances; and
- b) the Board erred in fact and in law, when it concluded that the claimant had just cause for quitting on the basis that he had reasonable assurance of employment after his course and that he had proven his availability for work while attending a training program of his own initiative.

## **ANALYSIS**

[9] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal. At least one of the reasons must have a reasonable chance of success, before leave can be granted.

[10] The Board's decision does not refer to the legal test for voluntarily leaving. Under the heading "Finding of Fact, Application of the Law", the Board cited two CUB decisions for the proposition that there is a distinction between one who leaves work to enroll in a course of study and one who was already enrolled and gives up a job held simultaneously with his studies, and one CUB decision in which the claimant was determined to have had just cause for leaving his employment in order to obtain a better paying job to support himself.

[11] The Board found that:

- a) Because of conflict between hours of work and course hours prescribed midterm, the claimant had no reasonable alternative than to leave his employment; and
- b) The claimant will be returning to work with a better position with the company, and he had just cause for leaving his employment in order to obtain a better paying job to support himself.

[12] The Board decision does not refer to jurisprudence or state the criteria to be considered to be found available for work. Under the heading “Decision”, the Board stated “Availability: The appeal is allowed.”

[13] The Applicant’s grounds of appeal are that the Board erred in law, and in fact and law, in making its decision when it failed to apply the correct legal test to the issue of voluntarily leaving and to the issue of availability. The Board did not refer to any legal test or criteria on either issue.

[14] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. Here, the Applicant referred to the legal tests on the issues of voluntarily leaving and availability and provided an explanation on how the Board is said to have failed to apply the correct test (in that it did not state or apply any test).

[15] The Application has set out reasons which fall into the enumerated grounds of appeal, and I am satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[16] The Application is granted.

[17] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[18] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng  
Member, Appeal Division