

Citation: *Canada Employment Insurance Commission v. J. M.*, 2015 SSTAD 943

Date: July 30, 2015

File number: AD-13-1171

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

J. M.

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 8, 2013, a board of referees determined that:

- The Respondent had just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on May 15, 2013.

ISSUE

[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 Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

- (b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The Board of Referees 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 Tribunal needs to be satisfied 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 states that the Board of Referees unanimously allowed the appeal under 29(c)(v) of the *Act* – obligation to care for a child or member of the immediate family and considered circumstances for just cause, namely working away from family - serious illness.

[10] The Applicant submits that the Board of Referees failed to resolve whether the Respondent had any alternative to leaving when he did. The Applicant further submits that the Board failed to show that the evidence supported there was a serious illness and that the situation necessitated the Respondent to provide care pursuant to 29(c)(v) of the *Act*.

[11] The Applicant finally submits that the Board of Referees erred in law when it failed to consider the legal test for voluntary leaving. Pursuant to s. 58(1)(c) of the *DHRSD Act*, the Board of Referees also erred in fact and law when it determined that the claimant had just cause to leave his employment.

[12] After reviewing the docket of appeal, the decision of the Board of Referees 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