Citation: ***C. P. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1204**

Date: October 8, 2015

File number: AD-15-1024

APPEAL DIVISION

Between:

C. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On August 14, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) determined that the claimant (Applicant) had not proven just cause to voluntarily leave her employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on September 15, 2015. The Applicant stated that she received the GD decision on August 28, 2015. The Application was filed within the 30 day limit.

ISSUE

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

SUBMISSIONS

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

a) She does not agree with the GD decision stating that she did not have just cause;

b) She has explained why, how and when she left her job and residence in X X in order to move to X X;

c) EI is an insurance, like house or car insurance, it should help when you need it;

d) It was a good choice to move; she would likely be unemployed and suffering with the high cost of living if she had stayed in X X;

e) She should be able to collect EI for the weeks when she was between jobs; and

f) She does not agree with the reasons given by the GD for dismissing her appeal.

LAW AND ANALYSIS

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

[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] The Tribunal must be satisfied that the reasons for appeal fall within any of the 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's submissions, as set out in paragraph [4] above, do not specifically refer to subsection 58(1)(c) of the DESD Act. However, since they relate to specific facts advanced by the Applicant, the submissions suggest that the Applicant is arguing that the GD based its decision on erroneous findings of fact.

[10] 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 seems to assert errors of fact but does not provide an explanation on how the alleged erroneous findings of facts were made in a perverse or capricious manner or without regard for the material before it.

[11] Not every erroneous finding of fact will fall within the terms of subsection 58(1)(c) of the DESD Act. For example, an erroneous finding of fact upon which the GD does not base its decision would not be caught, nor would one that is not made in a perverse or capricious manner or without regard for the material before the Tribunal.

[12] The GD considered the Applicant's evidence and submissions at pages 3 to 10 of its decision. The Applicant attended the GD hearing, gave evidence and made submissions.

[13] The role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD to intervene. It is not the role of the AD to re-hear the case *de novo*.

[14] I have read and carefully considered the GD's decision and the record. There is no suggestion that the GD failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[15] 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. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[16] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division