Citation: *A. H. v. Canada Employment Insurance Commission*, 2015 SSTAD 1333

Date: November 17, 2015

File number: AD-15-1209

APPEAL DIVISION

Between:

A. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

<div align="center">**REASONS AND DECISION**</div>

DECISION

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

INTRODUCTION

[2]   On September 30, 2015, the General Division of the Tribunal determined that:

-     The Applicant left her employment without 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 November 9, 2015, after receiving communication of the General Division on October 14, 2015.

ISSUE

[4]   The Tribunal must decide if it 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 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 submits that the General Division did not give due consideration to all the circumstances of the case of the Applicant. She pleads that had the General Division given due consideration to all circumstances affecting her, the General Division would have concluded she was entitled to receive benefits.

[10]   She submits that the General Division analysis does not refer to the Applicant and husband medical problems and necessity of the Applicant's health benefits, which would be unavailable in retirement if the Applicant remained employed past December 31, 2014.

[11]   Furthermore, she submits that the General Division erroneously concluded there was no direction or encouragement from management for the Applicant to retire when she did. However, she pleads, the September 27, 2012 letter incentivized eligible employees to retire before December 31, 2014, with the carrot of ongoing health and dental benefits and conversely penalized eligible employees who wished to retire after December 31, 2014.

[12]   She pleads that in light of their failing health, she had no reasonable alternative to leaving her employer and securing extended retiree health and dental benefits, which would be unavailable to her and her husband had she remained employed past the December 31, 2014.

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