

[TRANSLATION]

Citation: *L. T. v. Canada Employment Insurance Commission*, 2015 SSTAD 1359

Date: November 25, 2015

File number: AD-15-1220

APPEAL DIVISION

Between:

L. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal (the Tribunal) grants leave to appeal before its Appeal Division.

INTRODUCTION

[2] On October 9, 2015, the Tribunal's General Division concluded as follows:

- The Applicant had voluntarily left her employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (the Act).

[3] On November 6, 2015, the Applicant filed an application for leave to appeal before the Appeal Division.

ISSUE

[4] The Tribunal must decide whether 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*, "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 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] In accordance with section 58(1) of the Act, the only grounds of appeal are as follows:

(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 or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove his or her case.

[9] The Tribunal grants leave to appeal if it is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be able to determine, pursuant to subsection 58(1) of the Act, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her application for leave to appeal, the Applicant submitted that the General Division based its decision on an error of law and on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[13] She argued that the error of law made by the General Division was determining in this case that only the facts known by the parties at the time of the events should be considered in order to interpret paragraph 29(b.1)(i) of the Act, whereas the Federal Court of Appeal decision in *Lamonde* clearly indicates that the facts that existed at the time the claimant left their employment should be taken into account. However, she argued, in its full analysis of the situation, the General Division based its entire decision on the only facts known by the parties and not the actual facts.

[14] The Applicant submitted that, according to the actual facts, the employer admitted on August 17, 2015, that the Applicant should not have lost her employment and that the employment that had been offered to her in October 2014 was not legitimate under the collective agreement. She alleged that, had the Tribunal considered the actual facts in the situation overall, it would have reasonably concluded, on a balance of probabilities, that the Respondent had not discharged its burden of showing that the Applicant had voluntarily left her employment under paragraph 29(b.1)(i) of the Act because she never should have lost her employment and the 27.5-hour employment offered by her employer after she lost her employment was never legitimate.

[15] After reviewing the appeal file, the decision of the General Division and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised a question concerning the General Division's interpretation and application of paragraph 29(b.1)(i) of the Act whose response might justify setting aside the decision under review.

CONCLUSION

[16] The Tribunal grants leave to appeal before its Appeal Division.

Pierre Lafontaine

Member, Appeal Division