Citation: ***K. A. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1445**

Date: December 16, 2015

File number: AD-15-877

APPEAL DIVISION

Between:

K. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On June 24, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) held a hearing by teleconference, after which it determined that the claimant voluntarily left her employment without just cause within the meaning of the *Employment Insurance Act* (EI Act) and dismissed her appeal regarding a disqualification imposed pursuant to sections 29 and 30 of the EI Act. The decision of the GD was dated June 30, 2015 and was issued on July 2, 2015.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on August 4, 2015.

ISSUE

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

SUBMISSIONS

[4] The Applicant submitted in support of the Application that there were errors in the GD decision, including those related to:

a) The GD's finding that she "submitted a verbal resignation and went home";

b) Not taking into account the antagonistic workplace environment;

c) CUB 62597 which was not referred to in the GD decision but which applies to her case;

d) Pertinent information being absent from the GD hearing; and

e) The GD member's comments about the employer and Applicant arriving at an agreement, in that they were misleading.

LAW AND ANALYSIS

[5] Subsection 52(1) of *Department of Employment and Social Development* (DESD) *Act* states that an appeal of a decision made under the *Employment Insurance Act* must be brought to the General Division of the Tribunal within 30 days after the day the decision is communicated to the Applicant.

[6] The Application stated that the Applicant received the decision on June 30, 2015. This must be an error, as the Applicant could not have received the decision prior to it having been sent out by the Tribunal.

[7] Under paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, I deem that the decision of the GD was communicated to the Applicant 10 days after the day on which it was mailed to her on July 2, 2015. Accordingly, with July 11 and 12, 2015 falling on a weekend, I find that the decision was communicated to the Applicant on July 13, 2015.

[8] The Application was filed on August 4, 2015, 28 days after the day the decision was communicated to the Applicant, within the 30 day limit.

[9] According to subsections 56(1) and 58(3) of 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".

[10] 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".

[11] 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.

[12] 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.

[13] While the Applicant's submissions, as set out in paragraph [4] above, do not specifically refer to subsection 58(1)(c) of the DESD Act, [4] a), b) and d) suggest that the GD based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it. Submission [4] c) suggests an error of law. It is unclear what kind of error submission [4] e) asserts.

[14] Regarding the GD's finding that the Applicant "submitted a verbal resignation and went home", submission [4] a), the GD decision states (emphasis mine):

> [23] The Tribunal Member finds that the Claimant voluntarily left her employment when she submitted a verbal resignation and went home.
> …
>
> [26] The Tribunal Member finds that in consideration of all the circumstances in this case that on a balance of probabilities the Claimant had a reasonable alternative to leaving the employment when she did as she could have simply remained at work until she was able to secure other employment.

[15] The emphasis is mine to indicate where the GD Member may have misapprehended the facts. The Applicant asserts that she remained at her jobsite and continued to work for two weeks. There is information in the reconsideration file that the Applicant verbally gave two weeks' notice on November 11, 2014 in the heat of an argument with her director, made attempts to retract her statement the following business day and subsequently, and worked until November 21, 2014.

[16] As to the other submissions set out in paragraph [4] above, I note that:

a) The Application does not specify what "pertinent information" was absent from the GD hearing and how that is said to result in an appealable error;

b) The GD decision does mention conflict between the Applicant and her director at paragraphs [14], [16], [17] and [22];

c) A CUB decision is not binding on the GD or the Appeal Division; and

d) The decision does not refer to the employer and the Applicant arriving at an agreement, other than to summarize the Applicant's evidence at the GD hearing about the labour board complaint she filed and efforts to come to terms of an agreement with the employer; the Application does not specify how the GD was "misleading".

As such, I am not satisfied that the reasons in subparagraphs [4] b), c), d) and e) have a reasonable chance of success.

[17] 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 asserts errors of fact, as discussed in paragraphs [4] a), [11] and [12] above, and provides an explanation on how the GD is said to have based its decision on these erroneous findings of fact that were made in a perverse or capricious manner or without regard for the material before it.

[18] Considering the arguments raised by the Applicant and my review of the GD decision and docket, I am satisfied that the appeal has a reasonable chance of success on this one ground, namely, subparagraph [4] a).

CONCLUSION

[19] The Application is granted.

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

[21] 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