



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. J. v. Canada Employment Insurance Commission*, 2017 SSTADEI 26

Tribunal File Number: AD-16-1258

BETWEEN:

K. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: January 26, 2016

REASONS AND DECISION

[1] Previously, a member of the General Division dismissed the Applicant's appeal. In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (Act) states that the only grounds of appeal are that:

(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.

[3] The Act also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[4] This file concerns whether or not the Applicant had just cause to leave his employment voluntarily.

[5] Initially, the Applicant submitted that the General Division member "failed to understand the complexity of this file" and alleged that the outcome of the hearing was pre-ordained.

[6] As these allegations were completely unsupported, I directed Tribunal staff to contact the Applicant by letter to seek further details. Specifically, the Tribunal letter asked that the Applicant provide full and detailed grounds of appeal as required by the Act, and provided examples of what constitutes grounds of appeal. The Tribunal letter also noted that if this was not done, the application could be refused without further notice.

[7] The Applicant's representative responded by submitting that he "was not aware that my daughter had erroneously completed the Questionnaire: Quit, on the initial, on line EI application [*sic*]". He then commented on provincial-federal government relations, and stated that a resignation is not a resignation unless it is in writing. Essentially, he argued that the Applicant did not actually leave his employment but was dismissed by the Employer.

[8] I observe that this argument was raised before the General Division member, and that on the face of the record the member did indeed note the Applicant's submissions and consider them in his decision.

[9] Further, I can find absolutely no basis in the record upon which I could conclude that the member was biased against the Applicant or that the result of the hearing was pre-ordained, as suggested by the Applicant.

[10] Similarly, other than the alleged "complexity" of the file, there is no basis in the record or submissions for me to question the General Division member's discretionary decision to hold a teleconference hearing.

[11] In sum, I am not persuaded that the Applicant has advanced any arguments that have a reasonable chance of success. Instead, he appears to be asking that I re-weigh the evidence and render a new decision more favourable to him.

[12] This I cannot do.

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

[14] It is not sufficient for an Applicant to ask the Appeal Division for a different outcome than that already rendered. In order to have a reasonable chance of success, the Applicant must explain in some detail how in their view at least one reviewable error set out in the Act has been made. Having failed to do so, even after having been prompted to do so

by the Tribunal, I find that this application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer

Member, Appeal Division