



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. A. v. Canada Employment Insurance Commission*, 2016 SSTADEI 188

Tribunal File Number: AD-15-1340

BETWEEN:

G. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: April 7, 2016

REASONS AND DECISION

INTRODUCTION

[1] On November 26, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal from a reconsideration decision of the Canada Employment Insurance Commission (Commission). The Commission had determined that the Applicant had voluntarily left her employment without just cause and imposed a disqualification pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[2] The Applicant's appeal to the GD was completed on August 11, 2015. The Commission filed written representations on August 14, 2015 which conceded on the issue before the GD and consented to allowing the appeal.

[3] A teleconference hearing was held by the GD on November 25, 2015. The GD decision, dismissing the Applicant's appeal, was sent to the Applicant under cover of letter, dated November 26, 2015.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on December 9, 2015; it states that the GD decision was received by the Applicant on December 4, 2015. The Application was filed within the 30 day limit.

ISSUE

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

SUBMISSIONS

[6] The Applicant submitted in support of the Application that GD erred in law and 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.

[7] In particular, the Applicant argued that the GD:

- a) Erred in findings made in paragraphs [11], [16] to [19], [22], and [28] to [31] ;

- b) Erred in dismissing her appeal when the Commission had conceded the issue before the GD and provided a written consent to the GD; and
- c) Dismissed her appeal, when the Commission was satisfied with the medical documentation provided, found her submissions to be credible and found that she had just cause for leaving her employment as she had exhausted reasonable alternatives.

LAW AND ANALYSIS

[8] Subsection 52(1) of *Department of Employment and Social Development Act* (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 Appellant.

[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 Applicant attended the GD hearing. The Respondent did not attend the hearing but did file written submissions.

[13] The issue before the GD was the Applicant's disqualification for voluntarily leaving employment without just cause pursuant to sections 29 and 30 of the EI Act.

[14] The GD stated the correct legislative provisions when considering voluntary leaving and just cause. It found that the Applicant left her job without just cause within the meaning of the Act.

[15] The Application refers to many examples of (alleged) errors in the findings of facts upon which the GD based its decision. These include but are not limited to the reasons she left her job, the time it took to provide a medical note after being asked to by the Commission, the severity of her headaches and pain, and the requirement to look for other work before leaving her job when the problem was her inability to work because of her medical problems.

[16] The Applicant did not make specific submissions on the error of law that she relies upon, but she did reference the Commission having conceded to the appeal and consented to remove the disqualification that had been imposed.

[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 has identified grounds and reasons for appeal which fall into the enumerated grounds of appeal, specifically under paragraphs 58(1)(b) and (c) of the DESD Act.

[18] On the ground that there may be an error of law, erroneous findings of fact, or errors of mixed fact and law, I am satisfied that the appeal has a reasonable chance of success.

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