



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 258

Tribunal File Number: AD-16-628

BETWEEN:

S. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Douglas Fir Resorts & Chalets

Added party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 13, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 11, 2016, the Tribunal's General Division found that:

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

[3] The Applicant filed an application for leave to appeal to the Appeal Division on April 29, 2016.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n 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 *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (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] An application for leave to appeal 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 application for leave to appeal stage, the applicant does not have to prove his case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact, or jurisdiction to which the 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 his application for leave to appeal, the Applicant states that the General Division should not have determined that his mother was independent. He maintains that the General Division overlooked Dr. Laroche's diagnosis, which requires him to remain in the family home in order to look after domestic duties, such as housekeeping, groceries, laundry, and outdoor work.

[13] He states that the General Division erred in finding the medical evidence insufficient, whereas he had testified and submitted the Doctor's diagnosis. He claims that the General Division erred when it found that his mother did not need his help because his

father died in April and he had quit his job only in September. Lastly, he claims that the General Division erred when it found that he could not fulfil his obligations because he was searching for a job within a 50 km radius of the family home.

[14] The Tribunal finds that the Applicant never brought up the fact that he had to take care of his mother in his initial claim for benefits dated September 22, 2015. Rather, he stated that following his father's death, he, his mother, and his sister decided that it would be preferable for him to move back to his region in order to assist in the family's legal and financial estate (GD3-7).

[15] In a later interview on October 14, 2015, the Applicant states that, after having worked in Alberta for 20 years and following the death of his father in the spring of 2014, he thought he should move back to Quebec and finish his career. So, in September 2015, once his employer's peak season was over, he submitted his resignation. He explains that his decision also had the purpose of supporting his mother and sister during the estate process (GD3-15).

[16] During an interview to support his request for reconsideration on November 23, 2015, he states that he had to move back to Quebec because he had to look after the estate, such as investments, taxes, and selling the house. The Applicant also states that his mother is elderly, but that she is able to care for herself. However, he is the one responsible for mowing the lawn, winterizing the grounds, as well as other tasks. His mother is not capable of carrying out this type of work (GD3-23).

[17] In his application for leave to appeal before the Appeal Division, the Applicant states that following the death of his father, Dr. Laroche required that he and his sister remain in the family home to carry out household chores, such as cleaning, groceries, laundry, and outdoor work (AD1-4).

[18] The Tribunal finds that the medical evidence on file does not support the Applicant's position. In fact, there is no basis to conclude that the Applicant needed to stay with his mother to look after her.

[19] In November 2015, the Applicant himself admitted that, except when it comes to certain tasks, she was elderly but able to care for herself. Moreover, the mother was also receiving assistance from her daughter since the father's death in April, whereas the Applicant left his employment in September 2015.

[20] The Tribunal notes that the Applicant brought up the need to care for his mother only after the Respondent decided to disqualify him from receiving benefits.

[21] The preponderant evidence before the General Division shows that the Applicant, his sister, and his mother decided that it would be best if he would move back home in order to facilitate the family's legal and financial estate following the father's death.

[22] Case law repeatedly states that leaving an employment for personal reasons, such as wanting to be closer to family, does not constitute just cause within the meaning of paragraph 29(c) of the Act.

[23] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[24] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division