



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *F. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 284

Tribunal File Number: AD-15-914

BETWEEN:

**F. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division– Leave to Appeal**

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DECISION BY: Shu-Tai Cheng

DATE OF DECISION: May 30, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On July 13, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal of a decision of the Canada Employment Insurance Commission (Commission). The Applicant had been denied benefits on a claim he filed in November 2014, because the Commission had determined that he had left his employment without just cause. The Applicant appealed to the GD of the Tribunal.

[2] The Applicant attended the GD hearing, which was held by teleconference on July 8, 2015. The Respondent did not attend.

[3] The GD determined that:

- a) The Applicant wrote a letter of resignation stating a last day of work of November 28, 2014;
- b) The employer accepted the resignation by letter of termination on November 10, 2014;
- c) The Applicant voluntarily left his job;
- d) There were reasonable alternatives for the Applicant to try other than to voluntarily leave his job when he did;
- e) None of the Applicant's complaints about his employer were so grave that he had no choice but to leave his employment voluntarily; and
- f) The disqualification for voluntary leaving without just cause is to be made effective November 23, 2014, not November 9, 2014.

Based on these conclusions, the GD dismissed the appeal with a date modification.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on August 18, 2015. He received the GD decision on July 23, 2015 and filed the Application within the 30 day time limit.

[5] The Tribunal requested that the Applicant provide reasons for the appeal. The Applicant replied within the requested time.

## **ISSUE**

[6] Whether the appeal has a reasonable chance of success.

## **LAW AND ANALYSIS**

[7] Pursuant to section 57 of the *Department of Employment and Social Development Act* (DESD Act), an application must be made to the AD within 30 days after the day on which the decision appealed from was communicated to the appellant.

[8] 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”.

[9] 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.”

[10] 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.

[11] The Applicant’s grounds of appeal are that the GD failed to observe “numerous principles of natural justice and refused to exercise its jurisdiction and that the GD made numerous errors in the facts. The arguments of Applicant can be summarized as follows:

- a) Changes were made to his work duties;
- b) The employer did not respect the *Employment Standards Act* on the payment of wages, eating periods and other matters; and the employer was not compliant with occupational safety standards;
- c) The employer added undue stress to him and antagonized him, and his employment conditions were intolerable;
- d) In September 2014, he enrolled in a truck driving program;
- e) He looked for a job as a truck driver from September to December 2014 but was not successful because he lacked commercial driving experience;
- f) His requests and suggestions were rejected by the employer; and
- g) He wrote his resignation letter after a conflict with his employer on October 31, 2014.

[12] The GD decision stated the correct legislative provisions and applicable jurisprudence when considering the issue of voluntary leaving, at pages 2 to 5 and 8.

[13] The GD noted that the Applicant attended the GD hearing and testified. The GD decision, at pages 5 to 8, summarized the evidence in the file, the testimony given at the hearing and the Applicant's submissions.

[14] The Applicant argued similar points before the GD (as he stated in the Application and submissions). The Applicant's submissions in support of the Application largely re-argue the facts and arguments that he asserted before the GD.

[15] The GD is the trier of fact and its role includes the weighing of evidence and making findings based on its consideration of that evidence. The AD is not the trier of fact.

[16] It is not my role, as a Member of the AD of the Tribunal on an application for leave to appeal, to review and evaluate the evidence that was before the GD with a view to replacing the GD's findings of fact with my own. It is my role to determine whether the appeal has a

reasonable chance of success on the basis of the Applicant's specified grounds and reasons for appeal.

[17] As for the Applicant's assertion that the GD "failed to observe numerous principles of natural justice and refused to exercise its jurisdiction", he appears to rely on a recitation of the facts and arguments that he asserted before the GD.

[18] An appellant has the right to expect a fair hearing with a full opportunity to present his or her case before an impartial decision-maker: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras 21-22.

[19] I have reviewed the appeal file in detail, and it is clear that the GD had the documentary file (which included the Applicant's application and other documents related to the review conducted by the Commission). The GD also summarized, in its written decision, the Appellant's testimony about the challenges with his employment. The GD concluded, among other things, that the Applicant did not try to resolve the issues with the employer and that none of his complaints was so grave that he had no choice but to leave. The GD did not refuse to exercise its jurisdiction.

[20] An allegation of failing to observe a principle of natural justice cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of the applicant. It must be supported by material evidence demonstrating conduct that derogates from the standard. I have considered the allegations of breach of natural justice and, in light of the appeal record, I conclude that the material in them does not demonstrate conduct by the GD that derogates from the standard.

[21] If leave to appeal is granted, then the role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD to intervene. It is not the role of the AD to re-hear the case anew. It is in this context that the AD must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[22] I have read and carefully considered the GD's decision and the record. There is no suggestion that the GD failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[23] In order to have a reasonable chance of success, the Applicant must explain how at least one reviewable error has been made by the GD. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

## **CONCLUSION**

[24] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division