



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 345

Tribunal File Number: AD-16-657

BETWEEN:

J. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: June 29, 2016

REASONS AND DECISION

INTRODUCTION

[1] On April 8, 2016, 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 made a claim for benefits effective in April 2015 and was determined by the Commission to have voluntarily left his employment without just cause. The Applicant requested reconsideration of this decision, and the Commission maintained its original decision. The Applicant appealed to the GD of the Tribunal.

[2] The Applicant attended the GD hearing, which was held by teleconference on March 8, 2016. The Respondent (Commission) did not attend.

[3] The GD determined that:

- a) The Applicant quit his job;
- b) The Applicant's position is that he left his job for "medical" reasons;
- c) The Applicant did not demonstrate just cause for leaving due to medical reasons; and
- d) Having regard to all the circumstances, the Applicant did not prove that he had no reasonable alternative to leaving his employment when he did.

Based on these conclusions, the GD dismissed the appeal.

[4] The Applicant was notified of the GD decision by letter of the Tribunal, dated April 8, 2016.

[5] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on May 5, 2016. The Application was filed within 30 days of the Applicant having received the GD decision.

[6] The Tribunal asked the Applicant to provide further information to complete the Application. The Applicant replied prior to the deadline given.

ISSUE

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

LAW AND ANALYSIS

[8] Pursuant to paragraph 57(1)(a) 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.

[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.

Submissions

[12] The Applicant’s reasons for appeal are contained in the Application and his letter of June 2016. The Applicant’s arguments can be summarized as follows:

- a) He has asthma since 1962 and is allergic to dust;
- b) He was not healthy enough to do his job in a safe manner;

- c) The conditions at camp, where he worked, were harsh;
- d) He left Manitoba to go to B.C. to see his doctor; and
- e) There was no doctor for him in Manitoba.

Leave to Appeal

[13] The GD decision stated the correct legislative provisions and applicable jurisprudence when considering the issue of voluntary leaving, at pages 3 to 9.

[14] The GD decision, at pages 5, 6 and 8 summarized the evidence in the file, the arguments made at the hearing and the Applicant's submissions and position taken on the record.

[15] The Applicant argued similar points before the GD as he stated in the Application before the AD, i.e. that he quit his job for medical reasons and because of the job environment.

[16] The GD noted that the Applicant did not first obtain medical advice or attempt to seek medical accommodation with his employer. Therefore, there was no evidence to demonstrate just cause for leaving due to medical reasons.

[17] In order to grant leave to appeal, the Tribunal must be satisfied that the reasons for appeal fall within one of the grounds of appeal in section 58(1) of the DESD Act and that the appeal has a reasonable chance of success.

[18] 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.

[19] The GD decision was not based on an error of law or erroneous findings of fact.

[20] 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.

[21] As a result, I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[22] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division