



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 343

Tribunal File Number: AD-16-815

BETWEEN:

M. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 28, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 20, 2015, the Tribunal's General Division held that the Appellant voluntarily left her employment without just cause under sections 29 and 30 of the *Employment Insurance Act* ("the Act").

[3] The Applicant filed an application for leave to appeal before the Appeal Division on June 15, 2016, after receiving the General Division's decision on June 2, 2016.

ISSUE

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

THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* ("the DESD Act") provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal."

[6] 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."

ANALYSIS

[7] 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.

[8] On May 24, 2016, the General Division sent the Claimant letter notifying her that a decision had been rendered on her appeal and appended a copy of its decision. That letter stated in detail that, in order to be granted leave to appeal to the Appeal Division, she had to demonstrate the existence of one of the grounds of appeal set forth in subsection 58(1) of the DESD Act.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower 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 her case.

[10] 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.

[11] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact, or jurisdiction to which the response might justify setting aside the decision under review.

[12] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[13] In her application for leave to appeal, the Applicant asks the Appeal Division to reconsider the situation. She still disagrees with the decision given by the General Division and essentially repeats her version of the events that led to her voluntary leaving, which version has already been put before the General Division for consideration.

[14] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[15] The Tribunal finds that the Applicant is not raising any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked, despite the Tribunal's detailed instructions dated May 24, 2016.

[16] Upon review of the appeal filed, the General Division's decision and the Applicant's arguments, the Tribunal has no other choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division