



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. F. v. Canada Employment Insurance Commission*, 2016 SSTADEI 399

Tribunal File Number: AD-16-781

BETWEEN:

D. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Carmacks Maintenance Services

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 26, 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 26, 2016, the General Division of the Tribunal determined that:

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

[3] The Applicant requested leave to appeal to the Appeal Division on June 2, 2016.

ISSUE

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

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (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”.

[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] The Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant filed a request for permission to appeal on June 2, 2016. After review of the request, the Tribunal found the application to be insufficiently detailed and requested by letter that the Applicant supply his grounds of appeal and the reasons why his appeal has a reasonable chance of success. The Applicant responded on July 20, 2016.

[10] The Applicant essentially argues in appeal that the decision on his case was made on the assumption that he left his place of employment voluntarily and should have waited to find other employment before leaving. He pleads that this is an error of the General Division and that he should be granted this appeal on the fact that he was verbally told he was laid off. He pleads that he left as he was instructed to do. He submits that there was no opportunity for him to secure other work prior to leaving, as was suggested in the hearing, as he did not know he was going to be laid off. He submits that he was told by a person in a position of authority that he was laid off and that is why he left.

[11] In the present file, the General Division was faced with contradictory evidence and it did not find the evidence of the Applicant to be credible. It rather found that “the whole of the employer’s evidence that the Appellant quit his job (namely its statements to the Commission and the testimony of Mr. A. H. and Ms. B. L. at the hearing) to be consistent, credible and supported by common sense.”

[12] In his application for leave to appeal, the Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was already submitted to the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member

deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[13] Unfortunately for the Applicant, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[14] Furthermore, the evidence before the General Division simply does not support a conclusion that the Applicant's working conditions were so intolerable that he had to leave his employment immediately. As concluded by the General Division, the Applicant could have continued to work for his employer until he had secured other employment.

[15] Therefore, the Applicant has not identified any errors of jurisdiction or law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[16] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division