



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. N. v. Canada Employment Insurance Commission*, 2016 SSTADEI 395

Tribunal File Number: AD-16-920

BETWEEN:

P. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 25, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 27, 2016, the General Division of the Tribunal determined that:

- The Applicant had voluntarily left her 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 July 5, 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 argues that she was placed in an untenable position regarding overtime. Her oversight role to ensure safe and timely management of the operations with respect to screening at Gander Airport left her in an ongoing position to fill in excessive overtime. Her hours became a substitute for staffing challenges. There was absolutely no time within her week to execute a solid job search in that labour market for alternate employment. She pleads that the cases quoted and applied by the General Division do not apply to her circumstances and that the General Division did not properly consider the particularities of her case.

[10] In her 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.

[11] Unfortunately, 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.

[12] The evidence before the General Division simply does not support a conclusion that the Applicant's working conditions were so intolerable that she had to leave her employment immediately. Furthermore, the case law cited and applied by the General Division in support of its decision clearly indicates who has the burden of proof and what is the proper legal test

to be applied when deciding issues of voluntary leaving an employment although the facts of each case are different.

[13] Therefore, the Applicant in her leave application 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.

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

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division