



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 396

Tribunal File Number: AD-16-942

BETWEEN:

G. M.

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 June 10, 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 July 13, 2016 after receiving communication of the decision of the General Division on July 8, 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 if he had requested a transfer, it would not have necessarily been granted by the employer. He pleads that the Human Resources safety coordinator was not replaced after he left his job. The responsibilities of that position were given to the assistant store manager which implies that the new store manager was looking to make changes and cut costs.

[10] 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.

[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 undisputed evidence before the General Division is that the Applicant voluntarily terminated his employment. It was not the employer. The Applicant could have remained employed with Kent's until such a time as he found other, more suitable, employment. The Applicant could also have attempted mitigation or reported the alleged

antagonism or he could have simply asked for a transfer event though there was no guarantees.

[13] Therefore, the Applicant in his 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 his 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