



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. V. v. Canada Employment Insurance Commission*, 2016 SSTADEI 401

Tribunal File Number: AD-16-819

BETWEEN:

R. V.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal decision by: Pierre Lafontaine

Date of decision: July 29, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 13, 2016, the Tribunal's General Division held as follows:

- the Applicant voluntarily left his employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* ("the Act").

[3] The Applicant is deemed to have filed an application for leave to appeal before the Appeal Division dated June 16, 2016, after receiving the General Division's decision on May 27, 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] 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 his case.

[9] 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.

[10] 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.

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

[12] In his Application for leave to appeal, the Applicant essentially contends that the General Division did not take into account the state of his health, which had forced him to stop working.

[13] He contends that the General Division erred in claiming that he did not have medical evidence establishing just cause for his voluntary leaving based solely on the ground that his diagnosis was not confirmed by his attending physician until after his voluntary leaving. He claims that the delay in his diagnosis does not alter the fact that he was unable to work while waiting to see his physician.

[14] He contends that, in view of his medical condition, he could not remain employed, look for other employment or request a transfer. He claims that he had no other reasonable alternative but to leave his employment.

[15] Upon review of the appeal file and the General Division's decision, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raised a question of law and/or fact the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[16] The Tribunal grants leave to appeal before the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division