



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. M. M.*, 2016 SSTADEI 411

Tribunal File Number: AD-16-982

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

M. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on leave to appeal rendered by: Pierre Lafontaine

Date of decision: August 11, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On July 12, 2016, the General Division of the Tribunal determined that:

- The Respondent left her employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act (Act)*

[3] The Applicant requested leave to appeal to the Appeal Division on August 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 (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] In regards to the application for permission to appeal, 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 submits that the General Division erred in fact and in law when it concluded that the Respondent had no reasonable alternative to leaving her employment in Victoria and moving with her sister and brother-in-law to X. The Applicant pleads that the evidence before the General Division does not support that the Respondent would have been unable to pay her basic living costs by staying and renting an apartment in Victoria. The Applicant submits that when applying the legislation and based on the jurisprudence, the Respondent has failed to meet the test for just cause. She had the reasonable alternative of remaining employed in Victoria until such time as she secured work in X (*Canada (AG) v. Graham*, 2011 FCA 311).

[10] The Applicant argues that the Respondent made a personal decision to leave her employment and that the Federal Court of Appeal has upheld the principle that leaving employment for financial reasons does not constitute "just cause" for voluntarily leaving employment under the Act (*Canada (AG) v. Graham*, 2011 FCA 311; *Canada (AG) v. Richard*, 2009 FCA 122; *Canada (AG) v. Campeau*, 2006 FCA 376; *Canada (AG) v. Tremblay*, A-50-94).

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out

reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division