



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *N. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 503

Tribunal File Number: AD-16-1099

BETWEEN:

N. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to appeal decision by: Pierre Lafontaine

Date of decision: October 7, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On August 2, 2016, the Tribunal's General Division found that the following should be imposed:

- An indefinite disqualification pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act) for voluntarily leaving her employment without just cause.
- A disentitlement under sections 18 and 50 of the Act and section 9.001 of the *Employment Insurance Regulations* (Regulations) for failing to prove her availability for work while attending a course of instruction.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on September 2, 2016.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n 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 *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

(a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) The Board of Referees 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 their 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 *Department of Employment and Social Development 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 her application for leave to appeal, the Applicant maintains that there is a lack of information provided to students wishing to receive Employment Insurance while studying. She states that the General Division decision is based on laws that prevent students who are not properly informed from the chance to receive Employment Insurance while studying. She argues that this constitutes a breach of the principles of natural justice.

[13] On September 13, 2016, the Tribunal sent a letter to the Applicant requesting a detailed account of her grounds for appeal under subsection 58(1) of the *Department of Employment and Social Development Act* before October 7, 2016. However, the Applicant failed to follow through with the request.

[14] In this case, the General Division was correct in applying the Federal Court of Appeal's consistent case law that states that voluntarily leaving an employment to go back to school or to enroll in training does not constitute "just cause" within the meaning of sections 29 and 30 of the Act - *Canada (A.G.) v. King*, 2011 FCA 29, *Canada (A.G.) v. MacLeod*, 2010 FCA 201, *Canada (A.G.) v. Beaulieu*, 2008 FCA 133, *Canada (A.G.) v. Caron*, 2007 FCA 204, *Canada (A.G.) v. Côté*, 2006 FCA 219, *Canada (A.G.) v. Bois*, 2001 FCA 175.

[15] Furthermore, the Applicant had received adequate notice of the hearing before the General Division and she had the opportunity to be heard. Prior to the hearing, she was also able to review the claims submitted in her file and had the opportunity to respond. An unfavourable decision from the General Division based on law, regulations, and jurisprudence does not constitute a breach of the principles of natural justice.

[16] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application 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