



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 506

Tribunal File Number: AD-15-961

BETWEEN:

**K. L.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 12, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On July 15, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) determined that the claimant (Applicant) quit his job voluntarily without just cause and did not qualify to receive employment insurance benefits on a claim he filed in September 2014.

[2] The Applicant filed a letter with the Appeal Division (AD) of the Tribunal in August 2015, in which he stated “I respectfully request for a review of the findings”. The Tribunal sent a letter to the Applicant on September 3, 2015, advising that information was missing from his letter. The Applicant replied on October 9, 2015, however, a completed application for leave to appeal was not included in his response.

[3] On June 2, 2016, the Tribunal sent another letter to the Applicant, attaching a copy of the Leave to Appeal Application Form and asking that it be completed and returned by July 4, 2016. The Tribunal’s letter was returned to sender by Canada Post.

[4] Since June 2016, the Tribunal has attempted to contact the Applicant by telephone and voicemails have been left with a request to contact the Tribunal with his mailing address.

[5] Despite efforts to communicate with him, the Tribunal has been unable to locate the Applicant.

### **THE LAW**

[6] Paragraph 3(1)(a) of the *Social Security Tribunal Regulations* (Regulations) states “[t]he Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.”

[7] Subsection 3(2) of the Regulations provides that “[i]f a question of procedure that is not dealt with by these Regulations arises in a proceeding, the Tribunal must proceed by way of analogy to these Regulations.”

[8] Section 6 of the Regulations says that “[a] party must file with the Tribunal a notice of any change in their contact information without delay.”

[9] 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.”

[10] 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.”

[11] 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.

## **ISSUES**

[12] Whether the Applicant has abandoned the appeal.

[13] Whether the appeal has a reasonable chance of success.

## **ANALYSIS**

### **Abandonment**

[14] The Tribunal’s Application for Leave to Appeal form was not used by the Applicant. He filed a handwritten letter requesting “a review of the findings” and set out some written argument. The information in this letter taken with the Applicant’s additional letter of October

9, 2015, did not include sufficient information on the Applicant's grounds and reasons for appeal to the AD.

[15] The parties to the appeal had been notified of their obligation, under section 6 of the Regulations, to advise the Tribunal of any changes to their contact information and that the failure to do so may have a detrimental impact on the appeal. The Applicant's matter had been before the Tribunal since he filed an appeal with the GD in January 2015.

[16] On June 2, 2016, the Tribunal's letter asking that the Applicant complete the Leave to Appeal Application form was sent to the Applicant by regular mail to the following address: X Avenue, X B.C. XXX XXX. This was the address which the Applicant had provided to the Tribunal previously. The Leave to Appeal Application form includes sections asking for details of the grounds and reasons for appeal to the AD.

[17] On June 14, 2016, that letter was returned to the Tribunal by Canada Post, undelivered.

[18] The Tribunal tried to contact the Applicant by telephone in July, August and October 2016. There was no answer at the telephone number on file for the Applicant, although voice-mail messages were left by Tribunal staff.

[19] The Tribunal is required to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[20] Given that the Applicant has not communicated with the Tribunal despite numerous attempts to contact him, the Tribunal finds that he has abandoned the appeal. The Tribunal proceeds in this manner under the authority of subsection 3(2) of the Regulations, which allows the Tribunal to proceed by way of analogy in questions of procedure that are not dealt with in the Regulations.

[21] I do not make this decision lightly. However, I must make a decision which complies with the regulatory requirement to secure the just and most expeditious determination of appeals and applications as the considerations of fairness and natural justice permit.

## **Leave to Appeal**

[22] In the event that I am wrong about abandonment of this application, I have reviewed the information in the Applicant's letters to determine whether, on the basis of the incomplete information provided, the appeal has a reasonable chance of success.

[23] The Applicant's reasons for asking for a review of the GD decision can be summarized as follows:

- a) His employer failed to provide him with light duties after his return from a work-related injury;
- b) Other employees quit their employment with the same employer due to the work environment; and
- c) His safety and that of others was compromised.

[24] The issues before the GD were whether the Applicant demonstrated just cause for leaving his employment and whether he accumulated sufficient hours of insured employment to qualify for benefits.

[25] During the GD hearing, the Applicant argued that his employer failed to provide him with light duties. The GD discussed this point in paragraph [17] of its decision and concluded that the Applicant left his job, a non-union employer, because he wanted to get on the union call board, and that he did not have just cause to leave, because there were reasonable alternatives to leaving when he did.

[26] The Applicant did not advance the argument that he left his job due to the employer's failure to meet health and safety standards, and that is why he had just cause for leaving. This is a new argument before the AD and one for which evidence was not presented before the GD.

[27] In order to grant leave to appeal, the Tribunal must be satisfied that the reasons for appeal fall within one of the grounds of appeal in section 58(1) of the DESD Act, and that the appeal has a reasonable chance of success.

[28] If leave to appeal is granted, then the role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD to intervene. It is not the role of the AD to re-hear the case anew. It is in this context that the AD must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[29] I have read and carefully considered the GD's decision and the record. There is no suggestion that the GD failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[30] I also note that the GD determined that the Applicant had not accumulated the number of hours of insurable employment required by the *Employment Insurance Act*. Therefore, he did not qualify for benefits in any event.

[31] As a result, I am satisfied that the appeal has no reasonable chance of success.

## **CONCLUSION**

[32] The Tribunal finds that the Applicant has abandoned the appeal.

[33] In the alternative, the application for leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division