Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *L. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 533

Tribunal File Number: AD-16-1150

BETWEEN:

L. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to appeal decision by: Pierre Lafontaine

Date of decision: October 28, 2016

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On September 14, 2016, the Tribunal's General Division concluded that a disentitlement could be imposed on the Applicant in accordance with sections 9, 11(1), and 11(4) of the *Employment Insurance Act* (Act).

[3] On September 23, 2016, the Applicant is said to have filed an application for leave to appeal to the Appeal Division.

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 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 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] On September 23, 2016, the Applicant filed an application for leave to appeal; however, she used the wrong form and merely stated that she wished to appeal the General Division's decision. On September 27, 2016, the Tribunal sent her a letter requesting a detailed explanation of her reasons for appealing the General Division decision, with a deadline to respond of October 28, 2016.

[13] On October 20, 2016, the Applicant submitted the following reasons in support of her appeal:

> [translation]
>
> I strongly believe that the General Division erred in law in its decision. The decision rendered by Mrs. Aline Rouleau on September 14, 2016, page 10, paragraph 35. This situation is identical to mine. From the first day of work for this employer, I've had a shortage of work because of their seniority. I also never worked six weeks and four off—I did four weeks at the most.

[14] Before the General Division, the Applicant stated that she had received her 2015 schedule at the beginning of the season and that she regularly worked for four weeks, followed by four weeks of leave. She worked 12 hours per day, 7 days a week, and was paid on an hourly basis.

[15] The General Division found that there truly were planned periods of leave following several weeks of labour, and that the employment relationship was not severed during the periods of leave because the leave periods were part of the job and the return to work was expected.

[16] In her letter of October 20, 2016, the Applicant reiterated the facts that she had already presented to the General Division. Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[17] The Tribunal finds that the Applicant, in her application for leave to appeal and in her written response to the Tribunal, does not raise any question of law, fact, or jurisdiction the answer to which may lead to the setting aside of the decision under review.

[18] After reviewing the appeal file, the General Division's decision, and the Applicant's arguments, the Tribunal finds that the General Division properly applied the *Canada (A.G.) v. Jean*, 2015 FCA 242 criteria in assessing the Applicant's state of unemployment. The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

CONCLUSION

[19] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division