[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. C. B.,* 2016 SSTADEI 535

Tribunal File Number: AD-16-1217

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

C. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to appeal decision by: Pierre Lafontaine

Date of decision: October 28, 2016

DECISION

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

INTRODUCTION

[2]   On September 30, 2016, the Tribunal's General Division found that the Appellant had not voluntarily left her employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

[3]   The Applicant filed an application for leave to appeal to the Appeal Division on October 20, 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 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 the Applicant shows 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] The Applicant maintains that uncontested evidence in the file reveals that the Respondent would have worked at L'Atre in X until February 12, 2016, had she not prioritized her studies. It submits that the decision to terminate the employment was the Respondent's and not the employer's, as the General Division had erroneously maintained.

[13] The Applicant argues that the General Division erred in concluding that the Respondent had not voluntarily left her employment pursuant to sections 29 and 30 of the Act.

[14] Finally, it submits that there is ample case law to the effect that leaving an employment to focus on school is a personal decision and does not constitute just cause within the meaning of the Act.

[15]   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 a reasonable chance of success. The Applicant is raising a question of fact and law the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division