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

[TRANSLATION]

Citation: Pik-Quick (2014) Inc *v. Canada Employment Insurance Commission,* 2016 SSTADEI 570

Tribunal File Number: AD-16-1269

BETWEEN:

Pik-Quick (2014) Inc

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to appeal decision by: Pierre Lafontaine

Date of decision: December 14, 2016

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 31, 2016, the Tribunal's General Division found that the Appellant had voluntarily left her employment with just cause within the meaning of 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 November 8, 2016.

ISSUE

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

THE LAW

[5] As provided 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* provides 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 the response to which 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 an interview on January 15, 2016, the claimant stated to an officer of the Respondent that she left her job because she had been threatened by her employer (Exhibit GD3-16).

[13] In an interview that same day, the employer stated to an officer that she had asked the claimant to remain on the premises until she arrived. She said that, [Translation] "It might have been better for her health" not to be there because the claimant was sleeping with her spouse (Exhibit GD3-17).

[14] The General Division has concluded on a balance of probabilities that the claimant had no reasonable choice other than to leave her job because her employer had threatened her with violence.

[15] In support of her application for leave to appeal, the Applicant alleges that she did not threaten the claimant in any way during her telephone call. It is true that she was angry because the claimant had a secret intimate relationship with her spouse. However, she would not have risked her business or her career as a court reporter simply to obtain vengeance against the claimant. She contended that the General Division's decision was based on hearsay evidence and not on legitimate evidence.

[16] On November 15, 2016, the Tribunal asked the Applicant in writing to provide her detailed grounds of appeal in support of the application for leave to appeal under subsection 58(1) of the *Department of Employment and Social Development Act*. In her response to the Tribunal of December 13, 2016, the Applicant essentially repeats her version of the events, which has already been submitted to the General Division for consideration.

[17] Unfortunately, an appeal before 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.

[18] It is the role of the General Division to assess the parties' credibility. The Federal Court of Appeal decided in *Caron v. Canada (AG),* 2003 FCA 254, that Boards of Referees (now the General Division) are not bound by strict rules of evidence applicable in criminal or civil courts and that they can receive and accept hearsay evidence.

[19] The Tribunal finds that, despite the Tribunal's specific request of November 15, 2016, the Applicant is not raising any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision under review.

[20] After reviewing 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

[21] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division