



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. A. B.*, 2017 SSTADEI 6

Tribunal File Number: AD-16-1386

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**A. B.**

Respondent

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

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Leave to appeal decision by: Pierre Lafontaine

Date of decision: January 10, 2017

## REASONS AND DECISION

### DECISION

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

### INTRODUCTION

[2] On November 28, 2016, the Tribunal's General Division found the following:

-The Respondent did not voluntarily leave his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On December 19, 2016, the Applicant 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] In its application for leave to appeal, the Applicant submits that the uncontested evidence on file shows that the Respondent chose to terminate his employment. It was therefore the Respondent's decision, rather than the employer's, that brought on the end of the employment.

[13] It stated that once voluntary leaving has been established, the onus thus shifts to the respondent to prove that there was just cause for leaving. Under the circumstances, the General Division erred in finding that the Applicant had not discharged its onus of proof.

[14] The Applicant also submits that the General Division did not correctly apply the legal test when it concluded that the Respondent had just cause to leave his employment. The

Applicant maintains that the legal test consists of determining if, having regard to all circumstances, the Respondent had a reasonable alternative to leaving his employment.

[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 raised a question, the response to which could lead to the setting aside 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