



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. W. G.*, 2017 SSTADEI 42

Tribunal File Number: AD-17-52

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

W. G.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 6, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 20, 2016, the General Division of the Tribunal determined that the Respondent left his employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act)

[3] The Applicant requested leave to appeal to the Appeal Division on January 18, 2017.

ISSUE

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

THE LAW

[5] 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”.

[6] 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”.

ANALYSIS

[7] 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.

[8] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant submits that the General Division erred in law when it found the Respondent had voluntarily left his employment pursuant to undue pressure by the employer to leave employment and was therefore precluded from establishing that there could have been reasonable alternatives to leaving. The Applicant pleads that the Federal Court of Appeal has confirmed that the question of reasonable alternatives is a necessary and non-severable element of just cause determinations, even if a claimant brings themselves within one of the enumerated circumstances in section 29 of the Act.

[10] The Applicant also submits that the General Division failed to consider the evidence provided by the employer explaining changes to the work environment and the Respondent's own statement that he would have continued working if the employer had allowed him to use the company vehicle. A reasonable conclusion given the evidence that the Respondent's salary or benefits did not change is that the Respondent failed to discuss his concerns with the employer and had the alternative to remain working while doing so or pursuing alternate employment.

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[12] The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division