



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 58

Tribunal File Number: AD-17-122

BETWEEN:

R. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 14, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 4, 2017, the General Division of the Tribunal determined that the Applicant did not have just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act). The Applicant requested leave to appeal to the Appeal Division on February 8, 2017, after receiving communication of the General Division decision on January 9, 2017.

ISSUE

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

THE LAW

[4] 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”.

[5] 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

[6] 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.

[7] 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.

[8] The Applicant essentially submits that the General Division erred in law when it failed to apply correctly the legal test for voluntary leaving. More particularly, when it misapplied subsection 29(c)(v) of the Act – obligation to care for a child or member of the immediate family

[9] The Applicant submits that the letter in the docket at GD 3-28, although not expressing urgency clearly indicates that “it is better for mom and other sibling to be closer to the child in care” and it is a perverse conclusion to determine that because the child has been in care for some period of time that there is no urgency in availability of his mother.

[10] The Applicant also submits that the General Division did not make any references in its decision to certain of her representations regarding her employment on an on call basis.

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

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

Pierre Lafontaine

Member, Appeal Division