



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. A. A.*, 2017 SSTADEI 67

Tribunal File Number: AD-17-129

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

A. A.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 16, 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 20, 2017, the General Division of the Tribunal determined that the Applicant had just cause to leave his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on February 10, 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 argues that the General Division erred in fact and law when it found that the Respondent had just cause for voluntary leaving his employment. The Applicant submits that the General Division did not apply the correct legal test to the facts before it and ignored evidence showing the Respondent had reasonable alternatives opened to him.

[10] The Applicant pleads that the General Division neglected to take into consideration the Respondent's own statement that the issue of the door code was not a big deal, and that he could work around it, and that he did not mean to quit. He simply walked off the job hoping the employer would call him back.

[11] The Applicant submits that the decision goes against the jurisprudence that establishes that an employee who leaves his employment because he is not entirely satisfied with the working conditions fails to show just cause under the Act unless he can prove that the conditions were such as to leave him no alternative but to leave. There is no evidence to support the General Division's finding that the Respondent's situation was unique or his working conditions were so difficult that he had to quit without first securing another employment.

[12] 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. 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