



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. K. v. Canada Employment Insurance Commission*, 2017 SSTADEI 80

Tribunal File Number: AD-17-152

BETWEEN:

S. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 1, 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 13, 2017, the General Division of the Tribunal determined that the Respondent left her employment without 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 February 15, 2017, after receiving communication of the decision of the General 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, pursuant to paragraph 58(1) (c) of the DESD Act, 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.

[10] The Applicant argues that the General Division's finding that “the Appellant failed to secure alternate employment because she wanted to return to school to improve her English language skills” (para. 31) is erroneous and disregards the clear evidence before it that the Applicant wanted to work more than she wanted to attend school, which is why she quit schooling as soon as she was offered employment in September 2016.

[11] The Applicant pleads that the General Division based its decision on a second erroneous finding of fact, “that the Appellant failed to seek alternate employment prior to leaving her job” (para. 30), without regard to the material before it.

[12] The Applicant finally submits that the General Division erred in finding that she had “failed to investigate the new location” and that she “considered the impact the additional time and commute may add to her situation, without understanding if she could potentially find a way to balance her work and life situation” (para. 35).

[13] The Applicant argues that if the General Division had not based its decision on the aforementioned three erroneous findings of fact, disregarding the material before it, she would have been found to have had no reasonable alternative to leaving her employment when she did.

[14] 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

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

Pierre Lafontaine
Member, Appeal Division