



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. A. v. Canada Employment Insurance Commission*, 2017 SSTADEI 131

Tribunal File Number: AD-17-150

BETWEEN:

S. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 29, 2017

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) grants leave to appeal to the Tribunal's Appeal Division.

INTRODUCTION

[2] On January 20, 2017, the Tribunal's General Division found that the Applicant had voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On February 15, 2017, the Applicant is deemed to have filed an application for leave to appeal to the Appeal Division.

ISSUE

[4] The Tribunal must decide whether 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* (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 "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

ANALYSIS

[7] According to subsection 58(1) of DESD Act, 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] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is an initial 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 leave to appeal stage, the Applicant does not have to prove the 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, in accordance with subsection 58(1) of the DESD Act, be in a position to determine whether there is a question of law, fact or jurisdiction, the answer to which may lead to the setting aside of the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her application for leave to appeal, the Applicant states that the General Division erred in its interpretation and application of subparagraph 29(c)(iv) of the Act. She did not believe medical evidence to be necessary, given that the General Division had never called her credibility into question. She also states that, because she was constantly interrupted by the General Division, she had been prevented from properly presenting her evidence and had thus not been afforded a fair hearing.

[13] Upon review of the appeal file and the General Division's decision, as well as 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 has raised several questions, the answers to which may lead to the setting aside of the decision under review.

CONCLUSION

[14] The Tribunal grants leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division