



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. E. v. Canada Employment Insurance Commission*, 2017 SSTADEI 184

Tribunal File Number: AD-17-219

BETWEEN:

K. E.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 3, 2017

REASONS AND DECISION

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal (Tribunal).

INTRODUCTION

[2] On February 17, 2017, the Tribunal's General Division determined that the Applicant had voluntarily left her employment without just cause pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant is presumed to have requested leave to appeal to the Appeal Division on March 13, 2017.

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 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 "[l]eave 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] Before granting leave 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.

[9] In this case, the General Division had to determine whether the Applicant had voluntarily left her employment without just cause. The General Division found, from the evidence, that the Applicant had become very distressed and unhappy with some of the Board members during the April 5, 2016, meeting and that she chose to leave that meeting, stating, "I'm done." She then followed up by advising J. W. and A. G. that "I have at the moment quit BC." (GD3-104) The General Division also found that, through her failure to exhaust reasonable alternatives, the Applicant had not met the burden to prove that she had no reasonable alternative to leaving when she did.

[10] The Applicant, in her application for leave to appeal, as well as in further submissions filed at the request of the Tribunal, essentially argues that the allegations against her, the harassing manner in which they were brought to her attention and the unilateral revision of her working conditions by the employer gave rise to a constructive dismissal.

[11] After carefully reviewing the appeal file, the Tribunal can come only to the conclusion that the Applicant is asking this Tribunal to re-evaluate and reweigh the evidence that was brought before the General Division, which is the province of the trier of fact and not of an appeal court. It is not for the member deciding whether to grant leave to appeal to reweigh the evidence or to explore the merits of the decision of the General Division.

[12] Furthermore, this Tribunal has established that a claimant whose employment is terminated because they have given their employer notice of intention to leave the employment, either verbally, in writing or by their actions, must be considered to have left their employment voluntarily under the Act, even if they later express a desire to remain in their employment or change their mind.

[13] For the above-mentioned reasons, the Tribunal is not convinced that the appeal has a reasonable chance of success.

CONCLUSION

[14] The application for leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division