



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 203

Tribunal File Number: AD-17-389

BETWEEN:

A. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 17, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 12, 2017, the Tribunal's General Division found that the Applicant had voluntarily left his job without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on May 10, 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] According to subsection 58(1) of the 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] An application for leave to appeal 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 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 be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, the answer to which might justify setting aside the decision under review.

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

[12] In his application for leave to appeal, the Applicant essentially claims that the General Division erred in its interpretation and application of subparagraph 29(c)(vi) of the Act, namely that the Applicant had just cause for leaving his employment because he had reasonable assurance of obtaining another job in the immediate future, and he therefore had no reasonable alternative to leaving.

[13] The Applicant argues that the General Division imposed an excessively heavy burden on him when it indicated in its decision that he should have left his employment only when he had found another job that was equivalent in salary and that that would not have caused a situation of unemployment.

[14] The Applicant argues that subparagraph 29(c)(vi) of the Act allows a claimant to leave one employment for another employment. The legislative provision neither qualifies nor restricts the term “another employment.” Had the legislator intended for claimants who voluntarily leave non-seasonal employment in favour of seasonal employment to be disqualified from receiving benefits, he or she could have easily worded subparagraph 29(c)(vi) as follows: “reasonable assurance of another non-seasonal employment in the immediate future.”

[15] The Applicant also submits that, in the circumstances specific to his case, from the moment he had reasonable assurance of another employment in the immediate future, he was not obligated to assess solutions to keep the employment he wished to in fact leave.

[16] Upon review of the appeal docket, the General Division’s decision and 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 relating to the General Division’s interpretation and application of subparagraph 29(c)(vi) of the Act, the answers to which may justify setting aside the decision under review.

CONCLUSION

[17] The Tribunal grants leave to appeal to the Tribunal’s Appeal Division.

Pierre Lafontaine
Member, Appeal Division