



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 217

Tribunal File Number: AD-17-356

BETWEEN:

M. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 30, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On March 28, 2017, the Tribunal's General Division found that the Applicant had failed to prove that he had left his employment with just cause in accordance with sections 29 and 30 of the *Employment Insurance Act*.

[3] On April 28, 2017, the Applicant filed an application for leave to appeal before the Appeal Division after having received the General Division's decision on April 5, 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 stage, the applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above-mentioned 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 his application for leave to appeal, the Applicant asks that the Tribunal rule on his entitlement to sickness benefits given that he has submitted a medical certificate effective as of December 23, 2015.

[13] The Tribunal sent the Applicant a letter in which it requests that he provide detailed grounds for appealing the General Division's decision on the issue of voluntary leaving. In his response, the Applicant essentially restates his version of events in further detail.

[14] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[15] The Tribunal finds that, despite the Tribunal's specific request of May 3, 2017, the Applicant does not raise any questions of fact, of law or of jurisdiction, the answer to which might lead to the setting aside the decision under review.

[16] The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

[17] It is not the Tribunal's role to rule on the Applicant's entitlement to sickness benefits. As noted by the General Division, this was not the issue under appeal. The Applicant should instead submit this type of application directly to the Respondent.

CONCLUSION

[18] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division