Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *K W. v. Canada Employment Insurance Commission,* 2017 SSTADEI 233

Tribunal File Number: AD-17-381

BETWEEN:

K. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 13, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 28, 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 deemed to have requested 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] 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 leave to appeal can be granted, 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 decide whether the Applicant had voluntarily left her employment without just cause. The General Division found, from the undisputed evidence, that the Applicant had the choice to remain in her job since her employer had agreed to accommodate her request for medical leave until September 1, 2016. The General Division found that by sending a resignation letter on June 3, 2016, while on authorized medical leave, the Applicant chose to leave her employment.

[10] The General Division also found that in failing to exhaust reasonable alternatives, the Applicant had failed to meet the burden of proving that she had no reasonable alternative to leaving when she did. More particularly, the General Division was not satisfied that the Applicant had made reasonable efforts to resolve any workplace conflicts with her employer, and it found that no evidence of her efforts to find alternative employment had been submitted.

[11] A letter was sent to the Applicant on May 12, 2017, requesting that she explain in detail why she was appealing the General Division decision on the possible grounds of

appeal under subsection 58(1) of the DESD Act. The Applicant responded with an abundance of submissions and documents.

[12] Upon review of the submissions and documents, the Tribunal finds that the Applicant has essentially reiterated her version of events in support of her position that her employer had forced her to quit and that her health was her priority. She is frustrated by the way the employer mishandled the crisis in Fort McMurray and feels that she was treated unfairly, and even bullied, by her employer.

[13] After carefully reviewing the appeal file, the only conclusion the Tribunal can come to is that the Applicant is asking it to re-evaluate and reweigh the evidence that was put 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 of the Appeal Division who is deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the General Division decision.

[14] Furthermore, this Tribunal has established that a claimant whose employment is terminated because they give their employer notice of intention to leave their employment, verbally, in writing or through 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.

[15] Unfortunately for the Applicant, she has not identified any errors of jurisdiction or law, nor identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division