



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. W. v. Canada Employment Insurance Commission*, 2017 SSTADEI 260

Tribunal File Number: AD-17-480

BETWEEN:

D. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 7, 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 June 5, 2017, the Tribunal's General Division determined that the Applicant did not have just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on June 29, 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 must 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 support of his application for leave to appeal, the Applicant argues that the General Division wrongfully concluded that he took a leave of absence in order to help his parents settle in Canada. He submits that his parents were in Canada from September 11, 2017, to September 23, 2017, and that he accompanied them during his approved leave and, as such, would not have taken an indefinite leave to settle his parents.

[10] The Applicant argues that he took a leave of absence to obtain his Canada permanent residence as he felt that being an Indian citizen was his fault and that the only way to avoid discrimination at work was to get his Canada permanent residence.

[11] The undisputed evidence before the General Division demonstrates that the Applicant is the one who proceeded to end his employment with his employer by not returning to work. The Applicant decided not to return to work after an authorized leave of absence from September 11 to September 20, 2013, a period that coincided with the arrival of his parents in Canada. He wanted to extend his authorized leave but did not give the employer a return date. The Applicant argues that he took a leave of absence to obtain his Canada permanent residence.

[12] A constant jurisprudence has long established that leaving one's employment for personal reasons does not constitute just cause pursuant to the Act.

[13] Jurisprudence is also clear that an absence from work, notably one without permission, after the expiration of an authorized leave of absence, constitutes misconduct under the Act.

[14] For the above-mentioned reasons, and after reviewing the appeal docket, the General Division decision and the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[15] The Tribunal refuses leave to appeal to the Appeal.

Pierre Lafontaine
Member, Appeal Division