



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 261

Tribunal File Number: AD-17-487

BETWEEN:

M. L.

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) grants leave to appeal to the Tribunal's Appeal Division.

INTRODUCTION

[2] On June 7, 2017, the Tribunal's General Division found that the Applicant had voluntarily left her employment without just cause under 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 July 4, 2017.

ISSUE

[4] The Tribunal must determine 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 states 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 Act, the following are the only grounds of appeal:

- 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] A leave to appeal proceeding 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 gives the appeal 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 could 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 her application for leave to appeal, the Applicant submits that 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. She claims that the General Division did not report or consider a significant part of the facts and evidence concerning her final moments at work as well as the emails exchanged between parties.

[13] The Applicant submits that a voluntary departure must be clearly expressed and must not have been provoked by the employer. She alleges that the General Division did not consider the fact that the employer had asked her to return her work keys and that she was never contacted by him again about her return to work.

[14] After reviewing the appeal docket, the General Division's decision and the Applicant's arguments in support of her application for leave to appeal, the Tribunal determines that the appeal has a reasonable chance of success. The Applicant has raised a

question relating to the General Division's interpretation and application of sections 29 and 30 of the Act , the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

[15] The Tribunal grants leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine

Member, Appeal Division