



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *I. D. v. Canada Employment Insurance Commission*, 2017 SSTA DEI 275

Tribunal File Number: AD-17-376

BETWEEN:

I. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: July 18, 2017

DECISION

[1] On consent, leave to appeal is granted and the appeal is allowed.

INTRODUCTION

[2] Previously, a member of the General Division dismissed the Appellant's appeal. In due course, the Applicant filed an application for leave to appeal with the Appeal Division.

THE LAW

[3] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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.

ANALYSIS

[4] This application concerns an unusual fact situation regarding whether or not the Applicant had just cause to voluntarily leave his employment.

[5] Upon reviewing the leave to appeal application filed by the Applicant, the Commission filed submissions indicating that they wished to concede that leave to appeal should be granted and that the underlying appeal should be allowed.

[6] In making this rare double concession, the Commission now admits that the Applicant did not actually voluntarily leave his employment. Rather, they argue that he was part of a restructuring process which gave him no choice but to “voluntarily” leave.

[7] They note that because of the unusual circumstances in this case, had the Applicant stayed employed longer, he would have received a much smaller severance payment and would have received exactly the same Employment Insurance benefits. Since the Applicant’s actions at that time quite reasonably maximized his own financial benefit without increasing the financial burden upon the employment insurance system (due to the allocation of the severance payment), the Commission argues that it is an error to find that the Applicant left his employment without just cause.

[8] The Commission also notes that in a number of similar linked cases, they conceded at an earlier stage of the appeal process. Unfortunately, due to inadvertence, they failed to do so in this file. Their present submissions are an attempt to rectify this oversight.

[9] As the parties are now in agreement that this appeal must succeed, I am prepared to accept the Commission concessions.

CONCLUSION

[10] On consent, leave to appeal is granted and the appeal is allowed.

Mark Borer

Member, Appeal Division