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

[TRANSLATION]

Citation: *N. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 294

Tribunal File Number: AD-17-455

BETWEEN:

N. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 1, 2017

Canada

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 May 12, 2017, the Tribunal's General Division found that the disentitlement imposed pursuant to paragraph 18(1)(*a*) of the *Employment Insurance Act* (Act) was justified, since the Applicant had not proven her availability for work.

[3] On June 15, 2017, the Applicant filed an application for leave to appeal before the Appeal Division after receiving the General Division's decision on May 26, 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* (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 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 application for leave to appeal stage, the Applicant does not have to prove his or her case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above grounds of appeal has 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 may lead to the setting aside of the decision under review.

[11] Given the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant, in support of her leave to appeal application, argues that the General Division's decision is ill-founded, because she never intended to commit fraud. She explained that she was available for work and that she was looking for work. She asks that her unemployment history be checked so that it is evident that she is not "accustomed" to being unemployed.

[13] The Tribunal wrote to the Applicant on June 16, 2017, in order to explain the reason why her appeal before the Appeal Division has a reasonable chance of success. On July 20, 2017, the Applicant responded to the Tribunal in writing.

[14] In her correspondence received on July 20, 2017, the Applicant reiterates that she was available to hold a job at the Chez S. residence, as well as other jobs. She never intended to defraud the system because, since her studies, she has always worked.

[15] The General Division had to decide whether the disentitlement imposed on the Applicant pursuant to paragraph 18(1)(*a*) of the Act was justified, since the Applicant had not proven her availability for work.

[16] From the evidence before it, the General Division found that the Applicant had not demonstrated a desire to, upon being offered a suitable job, to return to the labour market. However, what it did find was that she actually had chosen not to do so by accepting work sharing at her regular employer. The Appellant [*sic*] also had not expressed her desire to return to the labour market by making significant efforts to find herself a suitable job on each working day of her benefit period. Finally, the General Division found, from the evidence, that the Applicant had established personal conditions that limited her chances of returning to work by accepting work sharing at her employer.

[17] The Tribunal emphasizes that the Applicant had initially stated in writing to the Respondent that she was not looking for work the week during which she was not working, because she was remaining available to her employer. (Exhibits GD3-45 and GD3-46).

[18] Unfortunately for the Applicant, 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.

[19] The Tribunal finds that the Applicant, in her application for leave to appeal and in her response to the Tribunal, does not raise any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision under review.

[20] After reviewing the appeal docket, the General Division's decision and the Applicant's arguments, the Tribunal finds that the General Division properly applied the *Faucher* criteria (A-56-96) in assessing the Applicant's availability. The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

CONCLUSION

[21] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division