



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. O. v. Canada Employment Insurance Commission*, 2017 SSTADEI 332

Tribunal File Number: AD-17-603

BETWEEN:

G. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 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 August 15, 2017, the Tribunal's Appeal 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 September 1, 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 support of his application for leave to appeal, the Applicant argues that the General Division erred in fact when it said that he had been fired. This is not what was said at the hearing. He also submits that no Record of Employment (ROE) was filed in the record by the employer to indicate whether the employer had considered him having voluntarily left his employment or that he had been fired.

[10] The General Division concluded that the Applicant had not met his burden of proving that he had “just cause” for voluntarily leaving his employment, within the meaning of section 29 of the Act, since he had reasonable alternatives to leaving.

[11] The preponderant evidence before the General Division shows that the Applicant is the one who ended his employment. He stated “I was not allowed to finish my beverage... I left at this point. I felt that she [the supervisor] was trying to give me a difficult time.” (GD3-12) He further stated “I’m not going to put up with this and I took my things and left.” (GD3-24) The General Division gave little weight to the Applicant’s previous statement to the Respondent that he had been fired and that he had no choice but to leave. (GD3-35)

[12] The General Division concluded that the Applicant had other alternatives to immediately quitting his job. He could have tried to resolve the issue with his supervisor and agency, or he could have stayed until the agency had offered him another job placement.

[13] Case law has determined that a claimant whose employment is terminated because they give their employer notice of intention to leave employment, verbally, in writing or by their actions, must be considered to have left their employment voluntarily under the Act.

[14] In regards to the ROE's absence from the file, it is for the General Division to assess the evidence and come to a decision. It is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has ended—*Canada (Attorney General) v. Boulton*, 1996 CanLII 11574 (FCA).

[15] For the above-mentioned reasons, and after reviewing the appeal docket and the General Division's decision, as well as after considering 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

[16] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division