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

Citation: *J. T. v. Canada Employment Insurance Commission,* 2017 SSTADEI 340

Tribunal File Number: AD-17-532

BETWEEN:

J. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 19, 2017

Canada

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 July 14, 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 July 28, 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, after going through years of abuse from his supervisor, he finally broke. The General Division Member does not understand how victims of abuse deal with tough situations. It is a known fact that victims of abuse generally stay with the abuser. They feel like they are trapped. Keeping his sanity was a valid ground for leaving his employment. He feels that his health was in danger. In May 2016, his new supervisor also started to harass him. He did not want to go through the abuse all over again so he snapped, and followed through with leaving his employment.

[10] On August 28, 2017, the Tribunal sent a letter to the Applicant asking him to explain in detail his grounds of appeal by September 22, 2017. He was then advised that it was not sufficient to simply repeat what he had said before the General Division. The Applicant replied to the Tribunal on September 12, 2017.

[11] In his reply to the Tribunal, the Applicant reiterated in more detail what he had said before the General Division and argues that he was also experiencing the same issues with his new supervisor. He feels that the General Division Member did not understand what a victim of abuse goes through and how they will think.

[12] 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. It gave little weight to the Applicant's statements that his employer had forced him to retire because they were inconsistent with the undisputed actions of the employer, who had offered the Applicant a supervisor's job and who had kept him employed on a casual basis.

[13] The preponderant evidence before the General Division shows that the Applicant is the one who ended his employment. He did not have to give his notice to the employer. In fact, the Applicant gave his notice of retirement despite his knowledge that his supervisor would be leaving.

[14] The General Division concluded that the Applicant had other alternatives to quitting his job. He could have tried to resolve the issue with his supervisor, he could have waited to see whether things improved after the supervisor had left the employer and he could have sought alternative employment before deciding to quit his employment.

[15] 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.

[16] The Applicant has not identified any errors of jurisdiction or law, nor has he identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[17] Unfortunately for the Applicant, an appeal to the Tribunal's Appeal Division is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[18] For the above-mentioned reasons and after reviewing the docket of appeal 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

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

Pierre Lafontaine
Member, Appeal Division