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

Citation: *K. V. v. Canada Employment Insurance Commission,* 2017 SSTADEI 346

Tribunal File Number: AD-17-387

BETWEEN:

K. V.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: September 21, 2017

Canada

DECISION

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

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) states that 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.

[3] The DESDA also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success."

[4] This case involves whether or not the Applicant had just cause to leave her employment.

[5] In her initial application, the Applicant repeated much of the evidence that she had previously given to the General Division member and explained why she disagreed with the member's decision, but did not set out a ground of appeal with a reasonable chance of success. Instead, she asked (at AD 1 - 5) that the Tribunal reconsider the General Division decision.

[6] Because of this, and to ensure that the Applicant had every opportunity to make her case in full, I asked Tribunal staff to contact the Applicant by letter to seek further details. Specifically, the Tribunal letter asked that the Applicant provide full and detailed grounds of

appeal as required by the DESDA, and provided concrete examples. The Tribunal letter also noted that if this was not done, the application could be refused without further notice.

[7] The Applicant responded by again repeating her version of events, and alleged that the failure of the General Division to accept her views constituted an error of fact.

[8] The Commission's initial determination was that the Applicant had not shown just cause to leave her employment because she had not shown that she had no reasonable alternative to doing so, given all of the circumstances. At the General Division hearing, the Applicant argued that this was wrong, and that she had no choice but to leave.

[9] In her decision, the General Division member considered the law and the facts, including the binding jurisprudence and the Applicant's testimony, and ruled against her.

[10] It is clear to me that the Applicant disagrees with this conclusion. However, it is equally clear that this application is a request that I rehear her case and come to a conclusion more favourable to her.

[11] This I cannot do.

[12] The role of the Appeal Division is to determine if a reviewable error set out in subsection 58(1) of the DESDA has been made by the General Division and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not our role to rehear the case *de novo*.

[13] In order to have a reasonable chance of success an applicant must explain in some detail how, in their view, at least one reviewable error set out in the DESDA has been made. Since the Applicant has failed to do so, even after having been prompted by the Tribunal, I have no choice but to find that the Applicant's application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer

Member, Appeal Division