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

Citation: *M. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 367

Tribunal File Number: AD-17-175

BETWEEN:

M. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 23, 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 January 19, 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 February 23, 2017, after receiving the General Division decision on February 8, 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] When considering an application for leave to appeal, 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 he did not make a formal complaint about bullying to his employer since there was no avenue or process for submitting such a complaint that he was aware of. He submits that the General Division assumed that he did not look for another job prior to his employment end date but he did in fact find a contract job shortly after.

[10] The Applicant further submits that the working conditions were intolerable and that the General Division was not exposed to such atmosphere to know the impact it had on him. Even the employer recognized the existence of friction in the workplace. He argues that he could not find employment contract law that supports the General Division's conclusions; more particularly, he argues that he could not file further information with the Respondent when requesting reconsideration, and that it should be given less weight.

[11] On June 6, 2017, the Tribunal sent a letter to the Applicant asking him to explain in detail his grounds of appeal by June 26, 2017. The Applicant replied to the Tribunal on June 13, 2017.

[12] In his reply to the Tribunal, the Applicant stated that he had provided all the details to support his appeal of the General Division decision and referred the Tribunal to his leave to appeal application.

[13] The General Division concluded that the Applicant had not meet 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.

[14] The evidence before the General Division shows that the Applicant was hired on a contract, which was scheduled to end on November 22, 2015, but that he left earlier, on October 30, 2015. The employer stated that the Applicant left the job prior to the end of his contract because the work required of him had too large of an impact on his family life.

[15] In response, the Applicant stated that he sent a letter of resignation to the employer on September 30, 2015. The letter indicated that he was leaving for personal reasons and he gave a two-week notice. Following this letter of resignation, it was agreed by the parties that he would work until the end of October 2015. The employer stated that it needed a longer notice to replace someone in such a key position and that the Applicant did not want to stay any longer than required to find a replacement.

[16] Before the General Division, the Applicant argued that he did not quit his job but that his end of contract was renegotiated with the employer. He also argued that the working conditions were intolerable and that he had no choice but to change his contract end date.

[17] The evidence clearly shows that it was the Applicant—not the employer—who triggered the job loss by submitting his letter of resignation prior to the end of his contract. The employer did not want the Applicant to leave his position. The employer's request for a longer notice does not change the fact that the Applicant could have remained in his job until the end of his contract, had it not been for his decision to resign.

[18] Employment Insurance 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.

[19] The General Division concluded from the evidence that the Applicant had other alternatives to quitting his job. He could have tried a little longer to mitigate the friction with the accountant of another office, he could have waited an extra three weeks in order to finish his contract, and he could have sought alternative employment before he decided to quit his job.

[20] As for the Applicant's position that he had to end his contract because his working conditions were intolerable, this is inconsistent with the Applicant's own decision to stay on the job until the end of October 2015, after submitting his letter of resignation on September 30. Furthermore, as stated by the General Division, this fact was raised by the Applicant only after an initial unfavourable decision was rendered by the Respondent.

[21] Unfortunately for the Applicant, an appeal to the Tribunal's Appeal Division is not a *de novo* hearing, where a party can re-present evidence and hope for a new favourable outcome.

[22] The Tribunal finds that the Applicant has not identified any errors of jurisdiction or law nor 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.

[23] For the above-mentioned reasons and after reviewing the appeal docket, the General Division decision and 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

[24] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division