



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 382

Tribunal File Number: AD-17-669

BETWEEN:

**L. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 2, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

### **INTRODUCTION**

[2] On September 11, 2017, the Tribunal's General Division found that the Applicant had voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on October 13, 2017, after receiving the General Division's decision on September 14, 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* (DESDA), "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 DESDA 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 the DESDA, 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.

[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 leave to appeal stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESDA, be in a position to determine whether there is an issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

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

[12] In support of her application for leave to appeal, the Applicant argues that the General Division erred in law in requiring that she look for another job before leaving, when she had to leave her job because it was a danger to her health or safety (subparagraph 29(c)(iv) of the Act).

[13] The Applicant submits that the General Division's decision is based on the member's assumptions and personal opinions, rather than on the evidence before it (paragraphs 39, 41, and 42 of the decision).

[14] The Applicant argues that the General Division imposed on her a burden of proof that was too high, and that she met all the criteria to justify her voluntary leaving.

[15] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised an issue that may lead to the setting aside of the decision under review.

## **CONCLUSION**

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

Pierre Lafontaine

Member, Appeal Division