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

[TRANSLATION]

Citation: *E. O. v. Canada Employment Insurance Commission,* 2017 SSTADEI 432

Tribunal File Number: AD-17-664

BETWEEN:

E. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 8, 2017

Canada

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal (Tribunal) refuses leave to appeal to the Tribunal's Appeal Division.

INTRODUCTION

[2] On September 7, 2017, the General Division determined that the Applicant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act), and that the disentitlement imposed under paragraph 18(1)(*a*) of the Act was justified because he had not proven his availability for work while he was taking a training course.

[3] The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on October 10, 2017. He is deemed to have received the General Division decision on September 17, 2017.

ISSUE

[4] The Tribunal must determine 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 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 stated 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 his application for leave to appeal, the Applicant argues that he did not leave his job and that he did not hand in a resignation or exit letter to management. He submits that his employer asked him to stop working.

[13] The Applicant submits that he went back to school because he no longer had work. He states that his training was his "plan B" when he was having trouble finding a stable job.

If he had been offered a full-time job, he would have stopped studying, like he did in April 2017.

[14] On November 9, 2017, the Tribunal sent the Applicant a letter asking him to explain his grounds of appeal in detail. He was told that it was not sufficient to simply repeat what he had already presented to the General Division. The Applicant replied to the Tribunal on November 29, 2017.

[15] In his reply, the Applicant essentially repeated the arguments in his application for leave to appeal. He reiterated that the employer had terminated his employment despite the fact that he wanted to continue working. He emphasized that he stopped his studies as soon as he found a full-time job.

[16] The General Division found that the Applicant had left his employment to return to school and that this was not the only reasonable alternative. The employer indicated that the end of the Applicant's employment was related to a return to school, that he did not ask to remain employed, even in a part-time position, and that it was not the end of a contract, since the employer was still hiring.

[17] The General Division found that nothing was stopping the Applicant from continuing his job and continuing to work for his employer full time if he did not want to pursue his studies. The employer confirmed that there was still work for the Applicant, had he wanted to stay.

[18] The General Division also found that the Applicant did not meet the availability criteria, since his availability was limited by personal conditions. In addition, there were no exceptional circumstances to rebut the presumption that the Applicant was not available for work during his training period.

[19] It is clear to the Tribunal that the Applicant is the one who ended his employment. The Applicant himself stated, in support of his claim for benefits, that he had decided to go to school to take a course, as a personal choice (GD3-7). Also, he did not check whether he could keep his job on a part-time basis and reduce his work hours so that he could continue

his training at the same time. The employer confirmed that this was a possibility for the Applicant, who never asked about it.

[20] In this case, the General Division was correct in applying the Federal Court of Appeal's consistent case law that states that voluntarily leaving an employment to go back to school, to continue studies, or to enroll in training does not constitute "just cause" within the meaning of sections 29 and 30 of the Act [*Canada (Attorney General) v. King*, 2011 FCA 29; *Canada (Attorney General) v. MacLeod*, 2010 FCA 201; *Canada (Attorney General) v. Beaulieu*, 2008 FCA 133; *Canada (Attorney General) v. Caron*, 2007 FCA 204; *Canada (Attorney General) v. Côté*, 2006 FCA 219; *Canada (Attorney General) v. Bois*, 2001 FCA 175].

[21] The General Division also properly applied the *Faucher* (A-56-96) criteria in assessing the Applicant's availability. It found, based on the evidence before it, that there were no exceptional circumstances to rebut the presumption of non-availability of a person enrolled in a full-time training course.

[22] Unfortunately for the Applicant, an appeal to the Appeal Division is not an appeal for which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[23] The Tribunal finds that the Applicant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[24] The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

CONCLUSION

[25] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division