



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. M. v. Canada Employment Insurance Commission*, 2018 SST 263

Tribunal File Number: AD-18-149

BETWEEN:

D. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 23, 2018

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] On January 24, 2018, the General Division of the Tribunal determined that the Applicant had left her employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on March 5, 2018, after receiving the General Division decision on February 2, 2018.

ISSUES

[4] The Tribunal must decide whether it will allow the late application and 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] With regard to the late application for leave to appeal, the Applicant requested leave to appeal to the Appeal Division on March 5, 2018, after receiving the General Division decision on February 2, 2018. She states that it took until March 2, 2018, for her to find a legal representative to take on her appeal at the Appeal Division. The Tribunal finds that, in the present circumstances, it is in the interests of justice to grant the Applicant's request for an extension of time to file her application for leave to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249; *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] As regards the application for leave to appeal, before leave 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.

[10] The Applicant submits that pursuant to paragraphs 58(1)(b) and (c) of the DESD Act, the General Division made an error in law and ignored material before it in dismissing her appeal. She states that the General Division erred in law in its interpretation of subparagraphs 29(c) (vii), (viii), (ix) and (x) of the Act. She also submits that the General Division ignored the evidence before it, particularly the contradictions in the employer's version of events.

[11] After reviewing the appeal docket and the General Division decision, and after considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[12] The Applicant has set out reasons that fall into the above-enumerated grounds of appeal and that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division