



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance v. K. M.*, 2018 SST 265

Tribunal File Number: AD-18-153

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

K. M.

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 February 15, 2018, the General Division of the Tribunal determined that the Respondent had not left her employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act) and that a penalty was not justified under section 38 of the Act.

[3] The Applicant requested leave to appeal to the Appeal Division on March 8, 2018.

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] With regard to 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.

[9] The Applicant submits that it has grounds of appeal pursuant to paragraphs 58(1)(b) and (c) of the DESD Act. It submits that the General division erred in law in basing its decision on a concession that the Applicant did not make. The Applicant also argues that the General Division made an erroneous finding of fact in a perverse manner given that the Applicant had presented evidence and submissions before the General Division that the Respondent had voluntarily left her employment to attend non-referred training, which jurisprudence has consistently found is not just cause for leaving. The Applicant submits that it further provided arguments that it had exercised its discretion judicially when it imposed a non-monetary penalty.

[10] The Applicant submits that it was incumbent upon the General Division to consider all the evidence before it and base its decision on that evidence, as well as the relevant legislation and jurisprudence. The Applicant argues that the General Division failed to do so.

[11] After reviewing the appeal docket and the General Division decision, and after considering the Applicant's arguments in support of its 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