



Tribunal de la sécurité
sociale du Canada

Social Security
Tribunal of Canada

[TRANSLATION]

Citation: *R. D. v. Canada Employment Insurance Commission*, 2018 SST 273

Tribunal File Number: AD-17-887

BETWEEN:

R. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of decision: March 26, 2018

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] On October 27, 2017, the Tribunal's General Division found that the Applicant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[3] The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on November 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* (DESD Act), an appeal to the Appeal Division may be brought only 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] According to subsection 58(1) of the DESD Act, 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] 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 DESD Act, be in a position to determine whether there is a question of law, fact or jurisdiction, the answer to which may justify setting aside the decision under review.

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

[12] The Applicant is seeking leave to appeal under paragraphs 58(1)(b) and (c) of the DESD Act. He submits that the General Division erred in its interpretation of subparagraph 29(c)(vi) of the EI Act, namely that the Applicant had just cause for leaving his employment because he had reasonable assurance of another employment in the immediate future and that this was the only reasonable solution in his case.

[13] The Applicant argues that the paragraphs in the General Division decision contradict and that errors were committed in the analysis of the facts.

[14] He also maintains that the General Division overlooked evidence before it, notably about the hiring that took place after he received reasonable assurance of obtaining another employment, and that it erred in its interpretation of the case law on the notion of reasonable assurance.

[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 several questions relating to the General Division's interpretation of subparagraph 29(c)(vi) of the Act, the answers to which may justify setting aside the decision under review.

CONCLUSION

[16] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division