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

Citation: *I. S. v. Canada Employment Insurance Commission*, 2018 SST 426

Tribunal File Number: AD-18-213

BETWEEN:

I. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 18, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, I. S. (Claimant), submitted his application for Employment Insurance benefits indicating that he was employed from May 16, 2016, until he quit his job on September 9, 2016, for health reasons. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had a reasonable alternative to leaving his job, which was to discuss the possibility of a leave of absence. Alternatively, the Claimant could have discussed with his employer its duty to accommodate his health situation. The Commission therefore denied the Claimant benefits since he had left his employment without just cause, within the meaning of the *Employment Insurance Act* (Act). The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision.

[3] The Claimant appealed the Commission's decision to the General Division. The General Division also found that the Claimant had reasonable alternatives to quitting his employment. The General Division concluded that the Claimant had created his own unemployment by not trying the employer's medical accommodation process and that he was not entitled to benefits under sections 29 and 30 of the Act.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. He essentially submits that he was diagnosed with Crohn's disease in March 2002, and that his health has progressively deteriorated since that time. Sixteen years later, after many surgeries and hospital stays, he claims he is no longer able to work.

[5] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error committed by the General Division.

[6] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal for a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant 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 Claimant does not have to prove his case but must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is a reviewable error based on which the appeal might succeed.

[10] Therefore, before leave can be granted, the Tribunal must 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.

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

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[12] In his application for leave to appeal, the Claimant states that the General Division found many things that he should have done prior to leaving his job. In particular, it found that he should have obtained a doctor's note. The Claimant argues that he did not need a note since he and his doctor knew the state of his Crohn's disease and that, after fighting it for 15 years, improvement will never happen. In April 2017, he however got a doctor's note explaining why he is unable to work. He presumes the General Division did not read it.

[13] The General Division found that the Claimant had reasonable alternatives to quitting his employment. He could have requested a medical leave of absence or sought assistance through the company's medical accommodation process. At the time of his resignation, he did not have a doctor's note stating that he was advised to quit for health reasons. The General Division found that the Claimant had created his own unemployment and that he was not entitled to benefits under sections 29 and 30 of the Act.

[14] The undisputed evidence before the General Division shows that it was the Claimant who took the initial steps to terminate his own employment, not the employer. On September 19, 2016, the Claimant gave immediate notice to his employer by email stating that he was "exiting the workforce and starting early retirement."

[15] The employer stated that the Claimant was an asset to the company and that it wanted him to continue working for it. It was aware the Claimant had Crohn's but believed everything was going well, as there was no indication to the contrary. The employer further declared that the Claimant could have sought assistance through the company's medical accommodation process instead of resigning. The employer had previously accommodated the Claimant by allowing him to work from home. The Employer was shocked and surprised when it received the Claimant's resignation email. Attempts were made to contact the Claimant to discuss an arrangement but to no avail.

[16] The Claimant confirmed that he did not see a doctor, receive advice to leave his employment, speak to Human Resources, request accommodations or request a leave of absence from his employer before quitting. Furthermore, the medical note the Claimant filed before the General Division is dated May 10, 2017, eight months after he left the employer, and does not mention that he was incapable of working before he left his employment in September 2016.

[17] Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing where a party can represent its evidence and hope for a new favourable outcome.

[18] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or a failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision.

[19] For the above-mentioned reasons, after reviewing the appeal docket and the General Division decision, and after considering the Claimant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[20] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine

Member, Appeal Division

REPRESENTATIVE:	I. S., self-represented