



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. Y. v. Canada Employment Insurance Commission*, 2018 SST 422

Tribunal File Number: AD-18-145

BETWEEN:

S. Y.

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

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. Y. (Claimant), made an initial claim for Employment Insurance benefits on June 23, 2014. A Record of Employment (ROE) was issued by the employer indicating that the Claimant had worked from May 8, 2011, until May 26, 2014, and that the employment had ended due to “shortage of work/ end of season or contract” after the employer’s business was sold to a new owner.

[3] In the context of another investigation, the Respondent, the Canada Employment Insurance Commission (Commission), contacted the new owner of the business. The Commission was told that the Claimant had quit her job with the new owner in June 2014, mentioning that she was no longer able to work due to health reasons. The new owner later issued a ROE that indicated that the Claimant had worked from May 27, 2014, until June 22, 2014, and had then quit.

[4] The Commission advised the Claimant by letter that her claim had been re-examined and that it was unable to pay her Employment Insurance regular benefits because she voluntarily left her job under the new owner without just cause and that voluntarily leaving her job was not her only reasonable alternative. The Claimant requested a reconsideration of this decision. The Commission maintained its initial decision.

[5] The Claimant appealed the Commission’s decision to the General Division. The General Division concluded that the Claimant had reasonable alternatives available to her prior to leaving her employment, taking all of the circumstances into account. The General Division found that the Claimant did not have just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the *Employment Insurance Act*.

[6] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. She argues that the General Division did not accept crucial evidence at the hearing, despite being made aware of the availability of the evidence in question.

[7] The Tribunal must decide whether arguably, there is some reviewable error of the General Division upon which the appeal might succeed.

[8] The Tribunal grants leave to appeal because the Claimant's appeal has a reasonable chance of success.

ISSUE

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

ANALYSIS

[10] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of 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.

[11] 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 her case; she 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 arguably some reviewable error upon which the appeal might succeed.

[12] 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.

[13] 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.

Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

[14] In her application for leave to appeal, the Claimant states that she brought a recording to the hearing to be used as evidence of her release by her new employer. She made it known at the General Division hearing that she had this recording but she was never asked to provide it as evidence. The recording, a phone call between the employer and the Claimant, represents important evidence because her employer specifically says that the Claimant was no longer needed for the job.

[15] The Claimant is essentially raising a question of natural justice.

[16] After listening to the recording of the General Division hearing, reviewing the decision of the General Division, and considering the Claimant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Claimant 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

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

Pierre Lafontaine
Member, Appeal Division

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| REPRESENTATIVE: | Sze Chung Mui, for the Applicant |
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