



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. R. T.*, 2018 SST 430

Tribunal File Number: AD-18-235

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

R. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 19, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Respondent, R. T. (Claimant), was employed full-time until March 3, 2017, when she voluntarily left her employment because she had accepted an on-call position with the X School District. There were no guaranteed hours, but the Claimant hoped that the position would develop into a permanent one, which would mean a significant increase in salary with the potential for better benefits. The Applicant, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not demonstrate just cause for voluntarily leaving her employment. The Claimant was therefore denied benefits. She requested a reconsideration of this decision. The Commission however maintained the original decision.

[3] The Claimant appealed the Commission's decision to the General Division, which concluded that the Claimant had no reasonable alternatives available to her before leaving her employment, when considering all the circumstances. The General Division found that there was no reason for the Claimant to stay at her full-time position because she took on a position that paid more and could lead to permanent full-time work.

[4] The Commission now seeks leave to appeal the General Division's decision to the Appeal Division. The Commission argues that the General Division erred in law when it ignored the jurisprudence of the Federal Court of Appeal that states that leaving permanent employment for part-time or on-call employment does not constitute just cause under sections 29 and 30 of the *Employment Insurance Act* (Act).

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

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

ISSUE

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

ANALYSIS

[8] Subsection 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 Commission 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 Commission does not have to prove its case; it must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Commission 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.

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

[12] In its application for leave to appeal, the Commission submits that the General Division erred in law when it ignored the jurisprudence of the Federal Court of Appeal that states that leaving permanent employment for part-time or on-call employment does not constitute just cause under sections 29 and 30 of the Act, even if the new job offers a better salary and better benefits. The Commission argues that the evidence before the General Division shows that the Claimant left her employment for personal reasons and that this cannot be done at the expense of the Employment Insurance program.

[13] After reviewing the appeal docket and the General Division decision, and after considering the Commission's arguments in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Commission 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. V., for the Applicant
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