



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. M. v. Canada Employment Insurance Commission*, 2018 SST 493

Tribunal File Number: AD-18-172

BETWEEN:

K. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 3, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. M. (Claimant), made an initial claim for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed the Claimant that they were disqualifying him from receiving EI benefits because he had voluntarily left his employment without just cause. The Claimant requested a reconsideration of this decision, but the Commission upheld its decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant quit and that he had reasonable alternatives to quitting his employment.

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. The Claimant, who did not attend the General Division hearing, submitted his version of events in response to the General Division's conclusions.

[5] The Tribunal sent a letter to the Claimant requesting that he file his grounds of appeal. In his reply to the Tribunal, the Claimant essentially restated the case that he had made in his application for leave to appeal.

[6] The Tribunal must decide whether the Claimant's appeal indicates that the General Division committed a reviewable error upon the basis of which the appeal might arguably succeed.

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

ISSUE

Does the Claimant'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 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.

[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; he 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.

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

[12] The General Division had to decide whether the Claimant had voluntarily left his employment without just cause pursuant to ss. 29 and 30 of the *Employment Insurance Act* (Act).

[13] The General Division found that the Claimant quit his job and that he had reasonable alternatives to doing so. He could have requested a leave of absence in order to care for his mother or he could have waited for the Workplace Safety and Health inspection to be completed. It also found that he had failed to demonstrate that there was a significant change in his work duties.

[14] The undisputed evidence before the General Division shows that it was the Claimant who took the initial steps to terminate his own employment by leaving the work premises because he assumed he was going to be suspended by his employer for taking too many sick leaves. He did not come back to work for the employer.

[15] The Claimant also confirmed that he did not explore reasonable alternatives to quitting his employment. He did not request a leave of absence to take care of his mother with his sister, did not discuss his work-related issues with the general manager, did not wait for the outcome of the Workplace Safety and Health inspection, and did not look for another job prior to quitting.

[16] The Tribunal notes that the Claimant did not appear at the hearing before the General Division, even though he had received proper notice of the hearing. In his application for leave to appeal and in his reply to the Tribunal, he essentially restates the facts of his case.

[17] Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can re-present 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 issues of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has identified neither errors in law nor erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[19] For the above-mentioned reasons and after reviewing both the appeal docket and the General Division decision and 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:	K. M., self-represented
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