



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. Q. v. Canada Employment Insurance Commission*, 2018 SST 515

Tribunal File Number: AD-18-82

BETWEEN:

J. Q.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 9, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. Q. (Claimant), made an initial claim for benefits. He indicated in his claim that he had to quit his job to take care of his wife “24 hours a day 7 days a week” because she had mental health issues. He also wanted a career change to improve his situation. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had reasonable alternatives to leaving his job and that he had not proven his availability for work. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision.

[3] The Claimant appealed the Commission decision to the General Division. The General Division concluded that the Claimant’s obligation to care for his wife did not meet the circumstances of s. 29(c)(v) of the *Employment Insurance Act* (Act) since the Claimant did not provide direct and daily personal care for his wife. It also found that the Claimant had not left his employment for medical reasons and that leaving his job to improve his financial situation did not constitute just cause under the Act.

[4] The General Division also concluded that the Claimant had alternatives to leaving his job. Notably, he could have requested a leave of absence or a change to the night shift, or he could have found another job to his satisfaction before quitting. The General Division ultimately concluded that he had failed to demonstrate that he was available for work and to demonstrate that he had made reasonable and customary efforts to obtain employment.

[5] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. He essentially repeats his version of the events that led him to quit his job. He argues that the General Division looked down on his situation, and that it thought he could live and work normally with his wife having mental health issues.

[6] The Tribunal sent a letter to the Claimant asking him to explain in detail his grounds of appeal under s. 58 of the *Department of Employment and Social Development Act* (DESDA). He was informed that it was not enough to simply repeat the testimony he had given before the General Division. The Claimant did not reply to the Tribunal's request.

[7] 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.

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

ISSUE

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

ANALYSIS

[10] Subsection 58(1) of the DESDA 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 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 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.

[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 s. 58(1) of the DESDA, 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?

[14] In his application for leave to appeal, the Claimant essentially repeats his version of the events that led him to quit his job. He argues that the General Division looked down on his situation, and that it thought he could live and work normally with his wife having mental health issues.

[15] The undisputed evidence before the General Division shows that it was the Claimant, not the employer, who took the initial steps to terminate his employment. It also shows that the Claimant could not directly take care of his wife, since there was a court order prohibiting her from being close to him after she had assaulted him. Furthermore, the undisputed evidence demonstrates that he wanted a career change and to improve his financial situation after working for the same employer for 15 years. This does not constitute just cause for leaving a job under the Act.

[16] As concluded by the General Division, the Claimant had alternatives to leaving his job. Notably, he could have requested a leave of absence or a change to the night shift to resolve his personal issues in the daytime, or he could have found another job to his satisfaction before quitting.

[17] The General Division ultimately concluded that the Claimant had failed to demonstrate that he was available for work and to demonstrate that he had made reasonable and customary efforts to obtain employment. The Claimant admitted that he was not available for work while he was dealing with his personal situation.

[18] Unfortunately for the Claimant, an appeal to the Tribunal's Appeal Division is not a new hearing where a party can present its evidence again and hope for a favorable outcome.

[19] In his application for leave to appeal, the Claimant has not identified any reviewable errors, such as an error of jurisdiction or a failure by the General Division to observe a principle of natural justice. He has not identified any errors of law or any 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.

[20] For the above-mentioned reasons, and after reviewing 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. Q., self-represented
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