



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. D. v. Canada Employment Insurance Commission*, 2018 SST 874

Tribunal File Number: AD-18-499

BETWEEN:

S. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 6, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. D. (Claimant), worked 20 hours per week part-time for the City of X, in addition to working a part-time job with the Commission scolaire X. She stopped working for the Commission scolaire due to a shortage of work and left her job with the City of X to move to Montréal and find work as a teacher. The Commission found that the Claimant had voluntarily left her employment for personal reasons that could not justify voluntary departure. Following a request for reconsideration, the Canada Employment Insurance Commission upheld its initial decision. The Applicant then appealed to the General Division.

[3] The General Division found that the Claimant's decision to move to Montréal remained a personal choice that did not constitute just cause within the meaning of s. 29(c) of the *Employment Insurance Act* (EI Act). The General Division also found that the Claimant did not have reasonable assurance of another employment when she decided to leave her employment with the City of X.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division's decision.

[5] In support of her application for leave to appeal, the Claimant reiterated the arguments that she presented before the General Division. She submits that part-time employment is not sufficient for her to care for her three children. She maintains that she had reasonable assurance of employment when she quit her job with the City of X. She compares her situation as a teacher on leave during the summer to that of fishers who stop fishing during the autumn and winter. She believes that she is entitled to Employment Insurance benefits.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal upon which the appeal might succeed.

ISSUE

[8] In her grounds of appeal, has the Claimant raised a reviewable error made by the General Division that might give the appeal a reasonable chance of success?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out 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 made in a perverse or capricious manner or without regard for the material before it.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at 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. In other words, she must establish that there is an arguable case that there is a reviewable error on the basis of which she has a reasonable chance of success on appeal.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal cited by the Claimant has a reasonable chance of success.

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

Issue: In her grounds of appeal, has the Claimant raised a reviewable error made by the General Division that might give the appeal a reasonable chance of success?

[13] In support of her application for leave to appeal, the Claimant reiterated the arguments that she presented before the General Division. She submits that part-time employment is not sufficient for her to care for her three children. She maintains that she had reasonable assurance of employment when she quit her job with the City of X. She compares her situation as a teacher on leave during the summer to that of fishers who stop fishing during the autumn and winter. She believes that she is entitled to Employment Insurance benefits.

[14] The evidence before the General Division shows that the Claimant worked for the City of X and that an employer-employee relationship did exist. She therefore had employee status within the meaning of s. 2(1) of the EI Act. Moreover, s. 29 of the EI Act provides that, for the purposes of interpreting ss. 30 to 33, “employment” refers to any employment of the claimant within their qualifying period or their benefit period.

[15] The uncontested evidence shows that the Claimant left her part-time employment with the City of X to move to Montréal, where she was convinced that she would have full-time employment as a teacher, given the shortage of personnel in this field in the Montréal region.

[16] Based on the evidence, the General Division found that the Claimant had made the personal decision to quit her job with the City of X to improve her situation and that this did not constitute just cause under s. 29(c) of the EI Act.

[17] As the General Division noted, though it may be legitimate for a person [translation] “to want to improve their life by changing employers or the nature of their work, a person cannot expect those who contribute to the Employment Insurance fund to

bear the cost of that legitimate ambition.” Wanting to leave your employment to improve your situation does not constitute just cause under s. 29(c) of the EI Act.¹

[18] Furthermore, a claimant’s desire to improve their financial situation may constitute good cause, but it does not constitute just cause for leaving their employment under the EI Act.²

[19] The General Division also determined that the Claimant did not have assurance of another employment when she decided to quit her job at the City of X.

[20] The Federal Court of Appeal established that the notion of “reasonable assurance of another employment,” described in s. 29(c)(vi) of the EI Act, assumes three things: “reasonable assurance,” “another employment,” and an “immediate future.”³

[21] The evidence before the General Division shows that when the Claimant chose to become unemployed in late June 2017, the Claimant did not know whether she would have a job or for which employer she would work and that she did not know at which point in the future she would have a job.

[22] Even though the Claimant quickly found a job as a teacher after leaving her job with the City of X, it cannot be said that she knew what job she would get or knew the identity of her future employer when she quit her job. At best, she knew that she had an excellent chance of being hired.

[23] Regarding the argument involving fishers, as the General Division noted, it is not for the General Division to modify the law such that the summer period for teachers would be considered the same as the winter period for fishers. Any changes to the law must come from Parliament.

¹ *Canada (Attorney General) v. Langlois*, 2008 FCA 18; *Canada (Attorney General) v. Langevin*, 2011 FCA 163.

² *Canada (Attorney General) v. Richard*, 2009 FCA 122; *Canada (Attorney General) v. Lapointe*, 2009 FCA 147.

³ *Canada (Procureur Général) v. Lessard*, 2002 FCA 469.

[24] Upon review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. D., self-represented
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