



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. R. v. Canada Employment Insurance Commission*, 2018 SST 887

Tribunal File Number: AD-18-521

BETWEEN:

M. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 7, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. R. (Claimant), worked as a dietary aide. She told the Canada Employment Insurance Commission she had voluntarily left her employment for physical and psychological health reasons. The Commission refused the Claimant's application because it found that she had voluntarily left her employment and that leaving was not her only reasonable alternative. The Claimant requested a reconsideration of that decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant did not have just cause for voluntarily leaving her employment because leaving was not the only reasonable alternative in this case.

[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 argued that the General Division did not consider her argument about s. 29(c)(xiii) of the *Employment Insurance Act* (EI Act), specifically regarding undue pressure from the employer to make her leave her employment.

[6] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error that might give the appeal a reasonable chance of success.

[7] The Tribunal grants leave to appeal because the appeal has a reasonable chance of success based on at least one of the grounds of appeal raised by the Claimant.

ISSUE

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

ANALYSIS

[9] 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 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 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. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[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, in accordance with s. 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may justify setting aside the decision under review.

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

[13] In support of her application for leave to appeal, the Claimant argued that the General Division failed to consider her argument about s. 29(c)(xiii) of the EI Act, specifically regarding undue pressure from the employer to make her leave her employment.

[14] The Tribunal also finds that the General Division appears to have erred by requiring that the Claimant have reasonable assurance of another employment before leaving her employment.

[15] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Claimant has raised an issue that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. R., self-represented
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