



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v. Canada Employment Insurance Commission*, 2018 SST 889

Tribunal File Number: AD-18-449

BETWEEN:

S. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 12, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal grants an extension of time to apply for leave to appeal and grants leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, S. M. (Claimant), made an initial claim for Employment Insurance benefits. He stated that he left his employment as the result of health problems and the death of his father. The [Respondent, the] Canada Employment Insurance Commission (Commission) [,] determined that the Claimant's decision to voluntarily leave his employment was not the only reasonable alternative in his situation. The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] Based on the evidence before it, the General Division concluded that the Claimant voluntarily left his employment and that this was not the only reasonable solution. The General Division found that there was no evidence that could lead it to find that the Claimant had health problems that required him to quit his job. It found that the Claimant had reasonable alternatives to quitting his job, particularly taking sick leave.

[4] The Claimant now seeks leave to appeal the General Division decision.

[5] In support of his application for leave to appeal, the Claimant argued that the General Division erred by failing to take into account all of the circumstances in his case that justified his voluntary departure. He submits that the General Division erred by not taking into account the application of ss. 29(c)(x) and 29(c)(xiii) of the *Employment Insurance Act* (EI Act), despite the evidence before it.

[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 Claimant has raised at least one ground of appeal based on which the appeal has a reasonable chance of success.

ISSUES

[8] Was the request for leave to appeal filed within the timeframe established by the law?

[9] In his grounds of appeal, has the Claimant raised a reviewable error committed by the General Division that may have a reasonable chance of success on appeal?

ANALYSIS

[10] 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.

[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; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must establish that there is an arguable case that there is a reviewable error on the basis of which the appeal has a reasonable chance of success.

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above-mentioned grounds of appeal 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 DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may justify setting aside the decision under review.

Issue 1: Was the request for leave to appeal filed within the timeframe established by the law?

[14] On July 16, 2018, the Claimant filed an incomplete application for leave to appeal after receiving the General Division decision on June 19, 2018.

[15] The Claimant could not complete the application for leave to appeal within the established timeframe because his representative was on vacation from July 19 to August 18, 2018. She had provided written notice of this absence to the Tribunal. The missing documents required to complete the appeal were provided to the Tribunal when the Claimant's representative returned from vacation. The Tribunal finds that, under the circumstances, the interest of justice favours granting the extension of time for the Claimant to file his application for leave to appeal.¹

Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[16] In support of his application for leave to appeal, the Claimant argued that the General Division erred by failing to take into account all of the circumstances in his case that justified his voluntary departure. He submits that the General Division erred by not taking into account the application of ss. 29(c)(x) and 29(c)(xiii) of the EI Act, despite the evidence on file.

[17] Upon review of the appeal file, the General Division 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

¹ X (Re), 2014 FCA 249; *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 FC 263 (FCA).

[18] The Tribunal grants an extension of time to apply for leave to appeal and grants leave to appeal to the Appeal Division.

Pierre Lafontaine

Member, Appeal Division

REPRESENTATIVE:	Line Lamy, Representative for the Applicant
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