



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. S. v. Canada Employment Insurance Commission*, 2018 SST 1001

Tribunal File Number: AD-18-661

BETWEEN:

E. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 16, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, E. S. (Claimant), filed an application for regular benefits. She stated she had left her employment to be better able to take care of her children. The Canada Employment Insurance Commission (Commission) determined that the Claimant's decision to voluntarily leave her employment was a personal choice and not the only reasonable alternative in her situation. The Claimant requested a reconsideration of that decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant had left her employment voluntarily and that leaving was not her only reasonable alternative. It determined that the Claimant did not have reasonable assurance of another employment before leaving her full-time employment and that she did not have just cause, within the meaning of the *Employment Insurance Act* (EI Act), to leave her employment to take care of her children.

[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 made an error of law in its interpretation of sections 29 and 30 of the EI Act about voluntary leaving and that it 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.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has 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 cited 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] Section 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.

[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, the Claimant must show that there is arguably some 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 Claimant's stated grounds of appeal has a reasonable chance of success.

[12] This means that the Tribunal must be in a position to determine, in accordance with section 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 made an error of law by basing its decision on the consequences of the Claimant's voluntary leaving rather than on the time when she decided to leave her employment.

[14] The Claimant also argues that the General Division 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. The Claimant submits that she did not leave her employment for financial reasons, as the General Division inferred, but rather to take care of her children. She submits that the General Division made errors of fact and law in considering the supporting facts as reasons for her 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 about the General Division's interpretation of sections 29 and 30 of the EI Act 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:	Yvan Bousquet, Representative for the Applicant
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