



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. P. v. Canada Employment Insurance Commission*, 2018 SST 986

Tribunal File Number: AD-18-519

BETWEEN:

L. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 12, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, L. P. (Claimant), applied for regular benefits. She stated that she left her employment because of difficult and unpleasant working conditions. The Canada Employment Insurance Commission determined that the Claimant's decision to voluntarily leave her employment was not the only reasonable alternative to leaving. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had left her employment to accept severance pay. It found that the other reasons that might have influenced her choice were secondary reasons for which the Claimant would not have left her employment. The General Division concluded that the Claimant had reasonable alternatives to leaving—namely, she could have kept her job and continued to make adjustments by working fewer hours or she could have sought other employment before leaving, which is not what she did.

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

[5] In support of her application for leave to appeal, the Claimant has essentially repeated her version of events and questioned the General Division's findings, which she considers disappointing.

[6] On September 4, 2018, the Tribunal asked the Claimant in writing to provide her detailed grounds of appeal in support of the application for leave to appeal under section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

It then told her that it is insufficient to simply repeat her testimony before the General Division. The Applicant replied to the Tribunal and essentially repeated her version of events in greater detail.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that gives the appeal a reasonable chance of success.

[8] The Tribunal refuses leave to appeal because the Claimant has not raised any grounds of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[9] In her grounds of appeal, has the Claimant raised a reviewable error that the General Division may have made that gives the appeal a reasonable chance of success?

ANALYSIS

[10] Section 58(1) of the 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.

[11] 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 application for 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 establish that there is an arguable case that there was a reviewable error based on which the appeal may succeed.

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that a claimant has raised has a reasonable chance of success on appeal.

[13] This means that the Tribunal must be in a position to determine, in accordance with section 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 decision under review.

Issue: In her grounds of appeal, has the Claimant raised a reviewable error that the General Division may have made that gives the appeal a reasonable chance of success?

[14] In support of her application for leave to appeal, the Claimant disagrees with the General Division's findings. She essentially repeated her version of events, which she had already submitted to the General Division for assessment.

[15] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[16] The issue under appeal before the General Division was whether the Claimant had voluntarily left her employment without just cause, in accordance with sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[17] It is undisputed that the employer, wanting to reduce its payroll, offered its employees either a three-year pay freeze or voluntary leave with severance pay. The Claimant chose to voluntarily leave her employment.

[18] The General Division found that the real reason the Claimant had left her employment was to benefit from the severance pay that the employer offered. It found that the other reasons that might have influenced her choice were secondary reasons for which the Claimant would not have left her employment, if it had not been for the severance pay.

[19] Moreover, in support of her application for reconsideration of the Commission's initial decision, the Claimant initially indicated that the real reason for leaving was the uncertainty caused by her employer's possible closure. At the time, her employer

reassured her that she would get Employment Insurance benefits in a year because she would receive a bonus for voluntarily leaving.¹

[20] The Tribunal notes that the General Division correctly stated the applicable legal test. It applied the test to the facts of the case and investigated whether the Claimant, after having considered all the circumstances, had no reasonable alternative to leaving her employment.

[21] Based on the information on file, the General Division found that the Claimant had voluntarily left her employment for personal reasons when she could have refused her employer's proposal and continued working for the employer while seeking other employment.

[22] As the General Division pointed out, even though the decision to accept the settlement is a good personal decision, it is insufficient for establishing just cause within the meaning of section 29 of the EI Act.

[23] The Tribunal notes that, despite the Tribunal's specific request to do so, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[24] After reviewing 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.

¹ GD3-19; GD3-21.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	L. P., self-represented
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