



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *M. K. v. Canada Employment Insurance Commission*, 2018 SST 1019

Tribunal File Number: AD-18-557

BETWEEN:

M. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 17, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal (Application) is refused.

OVERVIEW

[2] The Applicant, M. K., applied for Employment Insurance (EI) benefits after leaving his summer job in August 2017. He attended university in September of that year.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant voluntarily left his employment without just cause. The Applicant requested reconsideration. The Commission maintained its initial decision.

[4] The General Division found that: the Applicant voluntarily left his employment; there were reasonable alternatives to leaving his employment, so he did not have just cause; and he was properly disqualified from receiving EI benefits.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that he did not voluntarily leave his job and that there was no commitment from his employer on any set hours of work.

[6] I find that the appeal does not have a reasonable chance of success because the Application simply repeats arguments the Applicant made to the General Division and does not disclose any reviewable errors.

ISSUE

[7] Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

ANALYSIS

[8] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: 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] The Applicant submits that the General Division failed to take into account that his job was on an as-needed basis and the employer did not commit to any set hours of work.

Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

[12] I find that there is no arguable case that the General Division made a serious error in its findings of fact.

[13] The General Division took the evidence in the documentary record into account. It also considered the testimony that the Applicant gave during the teleconference hearing.

¹ *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).

² *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.

³ DESD Act at s. 58(2).

⁴ *Ibid.* at s. 58(1).

[14] The General Division considered the Applicant's testimony that his employer had not committed to set hours of work and his argument that this allowed him to leave at any time.⁵ It also conducted a full analysis of the issues of the Applicant's separation from work in August 2017, the voluntary nature of this separation, and whether he had reasonable alternatives to leaving.

[15] The General Division considered the Applicant's circumstances and found that he had a number of reasonable alternatives to leaving his employment when he did.

[16] The Applicant's submissions before the General Division, which included the arguments he made in the Application, were noted in the General Division decision. In essence, the Applicant seeks to reargue his case based on arguments similar to those he made at the General Division. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[17] The appeal does not have a reasonable chance of success based on this ground.

CONCLUSION

[18] I am satisfied that the appeal has no reasonable chance of success, so the Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	Robert Morrissey, Applicant's representative
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⁵ General Division decision at para.13.