



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. S. v. Canada Employment Insurance Commission*, 2018 SST 1128

Tribunal File Number: AD-18-506

BETWEEN:

C. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 1, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, C. S. (Claimant), established a claim for Employment Insurance benefits. She stated that she voluntarily left her employment because she felt she was being harassed by her supervisor. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had voluntarily left her job without just cause.

[3] The Commission found that she did not show that the situation at work was so intolerable that she was justified leaving when she did. Reasonable alternatives to leaving her job would have been discussing her situation with human resources, filing a complaint via the company intranet, speaking to a doctor, or securing other work before leaving. The Claimant requested that the Commission reconsider its decision, but it maintained its initial decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[4] The General Division accepted the Claimant's evidence that her supervisor imposed strict management controls on her and made inappropriate comments, including stating that other employees did not like her. The General Division concluded that the Claimant had other reasonable alternatives available to her. Instead of resigning, the Claimant could have informed the supervisor's manager of the reason for her meeting request and contacted human resources to make a formal complaint if the manager refused to meet with her. If the workplace situation caused her excessive stress, she could also have requested a medical leave from her employment.

[5] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. She essentially repeats her version of the events, which she already submitted to the General Division.

[6] On August 16, 2018, and October 4, 2018, the Tribunal sent a letter to the Claimant requesting a detailed explanation of her grounds of appeal in accordance with section 58 of the *Department of Employment and Social Development Act* (DESD Act). The Tribunal informed

her that it was insufficient to present evidence once again to the Appeal Division in order to obtain a different outcome than the General Division's decision. In her reply, the Claimant essentially repeated what she had submitted to the General Division.

[7] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error upon which the appeal might succeed.

[8] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal has a reasonable chance of success?

ANALYSIS

[10] Section 58(1) of the 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.

[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 her case; she must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, she must show that there is arguably some reviewable error that might form the basis of a successful appeal.

[12] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[13] 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 a question of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal has a reasonable chance of success?

[14] The General Division had to decide whether the Claimant had left her employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act*. The Claimant was present at the General Division hearing.

[15] The undisputed evidence before the General Division shows that it was the Claimant who took the initial steps to terminate her own employment, not the employer.

[16] The General Division concluded that the Claimant had other reasonable alternatives available to her, instead of resigning. The Claimant could have informed the supervisor's manager of the reason for her meeting request and contacted human resources to make a formal complaint if the manager refused to meet with her. If the workplace situation caused her excessive stress, she could also have requested a medical leave from her employment. She could have also searched for other employment before leaving.

[17] The Claimant, in her leave to appeal application and in her reply to the Tribunal, would essentially like to present her case once again to the Appeal Division.

[18] Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing where a party can present its evidence again and hope for a new, favourable outcome.

[19] The Tribunal finds that, despite the Tribunal's specific requests, the Claimant has not raised any questions of fact, law, or jurisdiction that might lead to the setting aside of the decision under review.

[20] For the above-mentioned reasons and after a review of the appeal docket and the General Division decision and consideration of the Claimant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	C. S., self-represented
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