



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *L. L. v. Canada Employment Insurance Commission*, 2018 SST 1130

Tribunal File Number: AD-18-646

BETWEEN:

L. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 2, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, L. L. (Claimant), filed an application for regular benefits. She left her employment after a move because of the distance between her new home and her workplace. The Respondent (Commission) refused the Claimant's application because it found that voluntarily leaving her employment was not the only reasonable alternative in the situation and that the Claimant was not available for work. 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 concluded that the Claimant had placed herself in the position of being unemployed by making the personal decision to leave her employment because of the distance between her home and workplace. The General Division found that she did not have just cause for voluntarily leaving her employment within the meaning of the *Employment Insurance Act* (EI Act). The General Division also found that the Claimant had demonstrated her availability for work starting on October 14, 2017.

[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 stated that she was the victim of an injustice. She argues that she had the right to move and that she did not move in order to stop working. She stresses that she was actively searching for work, starting in October 2017.

[6] On October 15, 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).

[7] In her response to the Tribunal, the Claimant argued that her employer acted in bad faith. It never told Employment Insurance that she had informed the employer that she would be available to work in her new area once her new place of residence was confirmed. She accused the Employment Insurance agent of basing their decision only on the employer's version of events.

[8] 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.

[9] The Tribunal refuses leave to appeal because the appeal does not have a reasonable chance of success based on any of the grounds of appeal raised by the Claimant.

ISSUE

[10] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[11] Section 58(1) of the DESDA specifies the only grounds of appeal for a General Division decision. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[12] 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; instead, she must 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.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal cited by the Claimant has a reasonable chance of success.

[14] This means that the Tribunal must, in accordance with section 58(1) of the DESDA, be in a position to determine 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: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[15] The issue under appeal before the General Division was whether the Claimant had voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the EI Act.

[16] The uncontested evidence before the General Division shows that the Claimant left her employment because she moved to a new home that was too far from her workplace so that she could take in her 85-year-old mother-in-law.¹ Her mother-in-law sold the triplex where they were living separately, and the Claimant's spouse bought a larger house that could accommodate her mother-in-law (whose autonomy was declining) in X, where the Claimant's daughter lives.² The Claimant was available for and capable of work as of October 15, 2017, despite her mother-in-law's health.³

[17] The Claimant did not look for work with another employer before leaving her employment.⁴ She wanted to become familiar with her new area before looking for work.⁵ She did not take the suggestion of her employer, Première Moisson X, to call Première Moisson X, which was 45 minutes from her new residence because she was overwhelmed by the move, did not have a vehicle, and was not yet familiar with public transit.⁶

¹ GD-3-8.

² GD3-24.

³ GD3-30.

⁴ GD3-10.

⁵ GD3-31.

⁶ GD3-32.

[18] The General Division found that the Claimant had placed herself in the position of being unemployed by making a personal decision to leave her employment because of the distance between her home and her workplace. The General Division therefore determined that she did not have just cause for voluntarily leaving her employment under the EI Act. The General Division also found that the Claimant had demonstrated her availability for work starting on October 14, 2017.

[19] Settled case law has long established that leaving one's employment for personal reasons not related to employment, such as a move to another residential area or transportation difficulties, does not constitute just cause for leaving one's employment under the EI Act.

[20] The Tribunal finds that the General Division correctly stated the applicable legal test. It applied said test to the facts given by the Applicant and asked itself if, having regard to all the circumstances, the Claimant had no reasonable alternative to leaving her employment.

[21] Based on the information on file, the General Division determined that the Claimant did not have just cause for voluntarily leaving her employment because leaving her employment at that time was not the only reasonable alternative in the situation.

[22] Unfortunately for the Applicant, 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.

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

[24] On review of 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.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	L. L., self-represented
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