



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. F. v. Canada Employment Insurance Commission*, 2018 SST 1258

Tribunal File Number: AD-18-749

BETWEEN:

J. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 29, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. F. (Claimant), filed an application for regular benefits. The Claimant cited difficulties with her supervisor and other members of the staff. The Respondent[, the Canada Employment Insurance Commission] (Commission)[,] rejected the Claimant's application because it found that voluntarily leaving her employment was not the only reasonable alternative in her case. 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 found that the Claimant had not shown evidence of harassment and that she had instead quit her job to avoid being dismissed after a suspension. It found that the Claimant had other reasonable alternatives to leaving her employment when she did.

[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 experiencing pressure at work caused stress that affected the good judgement of a person who was waiting for results related to surgery or cancer.

[6] On November 22, 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 reply to the Tribunal, the Claimant repeats her arguments and expresses the view that the General Division failed to explore the issue of the state of her health.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal on which the appeal might succeed.

ISSUE

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

ANALYSIS

[11] Section 58(1) of the DESDA 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 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; she must instead establish that the appeal has a reasonable chance of success. In other words, she must establish that there is arguably a reviewable error based on which the appeal has a reasonable chance of success.

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

[14] 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 justify setting aside the decision under review.

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

[15] In support of her application for leave to appeal, the Claimant states that experiencing pressure at work caused stress that affected the good judgement of a person who was waiting for results related to surgery or cancer. She feels that the General Division failed to explore the issue of the state of her health.

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

[17] In support of her application for leave to appeal, her request for reconsideration of the Commission's initial decision, and her appeal to the General Division, the Applicant states that she quit her job as a result of difficulties with her supervisor and other members of the staff. She stated that she preferred to quit her job after her one-day suspension than be dismissed after the next minor error.

[18] The General Division found that although the Applicant considered some of her experiences disagreeable, the evidence was insufficient to find that the supervisor or other members of staff had committed harassment. It found that the Applicant had quit her job because she had received a one-day suspension for errors in her till and because she knew that she would be dismissed for the next issue.

[19] The General Division found that the Applicant had other reasonable alternatives, namely taking sick leave or seeing a doctor to discuss her situation at work. She could have also tried to find another job before deciding to quit her job.

[20] The Tribunal notes that the General Division stated the applicable legal test correctly. It applied this test to the facts that the Applicant had presented, and it considered whether, having regards to all the circumstances, the Claimant had no reasonable alternative to leaving her employment.

[21] The Applicant criticizes the General Division for not exploring the issue of the state of her health. However, as the General Division highlighted, the medical documents that the Applicant produced are dated after her departure.

[22] Furthermore, the Applicant stated in her notice of appeal to the General Division that her health was not the reason for her departure. She basically stated that she wanted to keep her job until the operation she had scheduled in the coming months.¹

[23] In light of the information on file, the General Division found that the Applicant did not have just cause to voluntarily leave her employment because the decision to quit her job at that time was not her only reasonable alternative in that case.

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

[25] 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.

[26] 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 chance but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. F., self-represented
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¹ GD2-6.