Social Security Tribunal of Canada Tribunal de la sécurité sociale du Canada

Citation: *S. D. v Canada Employment Insurance Commission*, 2019 SST 196

Tribunal File Number: AD-19-96

BETWEEN:

S. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 12, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. D. (Claimant), applied for benefits and established a benefit period. He stated that he quit his job because the employer was refusing to give him a raise. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had voluntarily left his employment without just cause because he had other reasonable alternatives to quitting his job when he did. The Claimant requested a reconsideration, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that regardless of the Claimant's dissatisfaction with his inability to get a raise, quitting a job because one feels the income they are receiving from the employer is insufficient does not amount to just cause under the *Employment Insurance Act*. It concluded that the Claimant had other reasonable alternatives to leaving when he did. He could have tried to fulfil the conditions outlined by his employer and his employment contract for getting a raise or he could have looked for other employment before quitting his job.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant essentially repeats his testimony before the General Division.

[5] On February 12, 2019, the Tribunal sent the Claimant a letter asking for his grounds of appeal. He was advised that it was not enough to simply repeat what he said to the General Division. In his answer to the Tribunal, the Claimant repeated his initial arguments and filed more medical evidence.

[6] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division on which the appeal might succeed.

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

ISSUE

[8] Does the Claimant raise some reviewable error of the General Division on which the appeal might succeed?

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (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.

[10] 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 his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must prove that there is arguably some reviewable error on which the appeal might succeed.

[11] Therefore, before it can grant leave, the Tribunal must be satisfied that the reasons for appeal fall within any of the grounds of appeal mentioned above and that at least one of the reasons has a reasonable chance of success.

[12] 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 an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Does the Claimant raise some reviewable error of the General Division on which the appeal might succeed?

[13] The Claimant seeks leave to appeal the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant essentially repeats his testimony before the General Division. He states that his experience with the employer had an effect on his mental and physical health that caused his to leave his employment. He filed a letter from a medical practitioner. He also feels that his employer humiliated him and constructively dismissed him.

[14] On February 12, 2019, the Tribunal sent the Claimant a letter asking for his grounds of appeal. It advised him that it was not enough to simply repeat what he said to the General Division. In his answer to the Tribunal, the Claimant repeated his initial arguments and filed more medical evidence.

[15] The Appeal Division will not consider the Claimant's medical evidence filed in support of his application for leave to appeal. It is well-established case law that the Appeal Division does not consider new evidence because its powers are limited by section 58(1) of the DESD Act. The appropriate procedure is to file an application to rescind or amend the General Division decision under section 66 of the DESD Act.

[16] The General Division had to determine whether the Claimant had just cause to voluntarily leave his employment at the time he left.

[17] Whether the Claimant had just cause to voluntarily leave his employment depends on whether he had no reasonable alternative to leaving, having regard to all the circumstances, including several specific circumstances listed in section 29 of the EI Act.

[18] The General Division did consider the Claimant's argument that his employer constructively dismissed him. However, it found from the evidence that the Claimant was not going to be dismissed from his employment and could have continued working for his employer had he chosen not to quit. The General Division found that the Claimant quit after his employer refused to grant him a raise.

[19] In his initial application for regular benefits, the Claimant confirmed that he had quit because he was tired of waiting for the raise he requested from his employer. At that time, he did not mention any medical reasons for leaving his employment and he did not request sickness benefits.[1]

[20] The Claimant also confirmed in an interview with the Commission that he had left because he was tired of waiting for the raise he had requested. He felt he deserved the raise.[2]

[21] In his request for reconsideration, the Claimant again confirmed that he had left his employment because he did not get the raise he requested from his employer.[3]

[22] The employer submitted to the Commission that they were not about to suspend or fire the Claimant when he decided to leave.[4]

[23] As stated by the General Division, regardless of the Claimant's dissatisfaction with his inability to get a raise, quitting a job because one feels the income they are receiving from the employer is insufficient does not amount to just cause under the EI Act.[5]

[24] The General Division also found that there was not enough evidence before it to support that the job was affecting the Claimant's mental health, that his employer was humiliating and abusing him, or that quitting his employment because of his health was his only reasonable option.

[25] The General Division concluded that the Claimant had other reasonable alternatives to leaving when he did. He could have tried to fulfil the conditions outlined by his employer and his employment contract for getting a raise or he could have looked for other employment before quitting his job and putting himself in financial jeopardy.

[26] In his leave to appeal application, the Claimant would essentially like to present his case again. Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a

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[1] GD3-11.
[2] GD3-27.
[3] GD3-33 and GD3-34.
[4] GD3-28, GD3-36, and GD3-38.
[5] *Canada (Attorney General) v Tremblay*, A-50-94.

new hearing, where a party can present their evidence again and hope for a new, favourable outcome.

[27] In his application for leave to appeal, the Claimant has not identified any reviewable errors, such as a jurisdictional error, or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

[28] For the reasons mentioned above and after reviewing the appeal file and the General Division decision and after considering the Claimant's arguments in support of his application for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. D., self-represented