



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. M. v Canada Employment Insurance Commission*, 2019 SST 297

Tribunal File Number: AD-19-108

BETWEEN:

E. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 21, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, E. M. (Claimant), worked as a X for the employer from August 23, 2013, to May 27, 2018. He stopped working for that employer. The Respondent, the Canada Employment Insurance Commission, determined that the Claimant did not have just cause for voluntarily leaving his employment with the employer.

[3] The Claimant requested a reconsideration of that decision. He explained that he had moved to a different area from the one he worked in. He stated that he had experienced psychological harassment and intimidation from the employer. He also argued that the health issues he experienced while performing his work (for example, stress, fatigue, exhaustion) were another factor in his decision to leave his employment. However, the Commission upheld its initial decision. The Claimant appealed that decision to the Tribunal's General Division.

[4] The General Division found that the Claimant had voluntarily left his employment because he had the option of leaving or staying. It found that the decision to move was a personal decision that could not justify leaving voluntarily. The General Division also found that the evidence of psychological harassment was insufficient and that the Claimant's health did not justify leaving voluntarily.

[5] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. In support of his application for leave to appeal, he argues that the General Division did not consider his explanations.

[6] The Tribunal sent the Claimant a letter so that he could explain his grounds of appeal in detail. In his reply to the Tribunal, the Claimant essentially repeats that the General Division did not consider the facts in support of his voluntary leaving.

[7] The Tribunal refuses leave to appeal because none of the grounds of appeal that the Claimant has raised give the appeal a reasonable chance of success.

ISSUE

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

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 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 of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead 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.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal 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 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?

[13] The Claimant argues that the General Division did not consider the evidence that showed that he was the victim of psychological harassment and intimidation from the employer. He submits that the General Division ignored the problems caused by the stress, fatigue, and anxiety caused by his work conditions. He lived with constant insecurity and was not supported by his union following his complaint. He submits that the employer reduced his hours, which forced him to make difficult choices.

[14] The Tribunal finds that the Claimant is basically repeating the facts that he already submitted to the General Division regarding his voluntary leaving.

[15] Unfortunately, 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.

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

[17] The General Division found that the Claimant could have continued the employment he had but that he took the initiative to sever the employment relationship by telling the employer that he would not continue to hold his position. It found that the Claimant's choice to move to the area where he had a cottage was a personal decision.

[18] The General Division found the Claimant's statements—that he had left his employment voluntarily because of the harassment and intimidation he said he experienced in his workplace or because of health issues—lacked credibility, given that he did not mention those situations until after the Commission had informed him that he would not be entitled to receive benefits.

[19] The General Division granted more weight to the statements the Claimant made to explain his voluntary leaving before the Commission informed him that he would be disqualified from receiving benefits. It also considered the evidence the Claimant submitted to show that he had experienced harassment or intimidation from the employer or that he had left because of health reasons to be insufficient.

[20] The Tribunal finds that the General Division correctly stated the applicable legal test. It applied this test to the facts of the case and asked whether, having regard to all the circumstances, the Claimant had no reasonable alternative to leaving his employment.

[21] The Tribunal notes that, despite the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction concerning his voluntary leaving that may lead to the setting aside of the decision under review.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	E. M., self-represented
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