



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. E. v Canada Employment Insurance Commission*, 2019 SST 339

Tribunal File Number: AD-19-152

BETWEEN:

**T. E.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 5, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Claimant, T. E., left her job in Toronto in order to move and be with her fiancé who had recently moved to Amherstburg. The Claimant applied for employment insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant was disqualified from receiving benefits because she had failed to prove that she had just cause for quitting. The Claimant requested a reconsideration of this decision, but the initial decision was upheld. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant did not have just cause to voluntarily leave her employment and that she should be disqualified from receiving employment insurance benefits.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In support of her application for leave to appeal, the Claimant essentially reiterates the facts of her case and requests a reconsideration.

[5] On March 4, 2019, a letter was sent by the Tribunal to the Claimant asking her to explain in detail her grounds of appeal. The Claimant replied that the General Division erred in law. She puts forward that she had to move to follow her spouse to the distance she had to travel. She argues that she had just cause for her to leave her job in Toronto since she found new employment on November 21, 2018. She is only asking for 6 weeks of benefits. She wants her appeal to be reconsidered.

[6] The Tribunal must decide whether there is some reviewable error of the General Division upon 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 upon 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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 Employer 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 but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] 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.

[12] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which 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 might succeed?**

[13] The Claimant, in her application for leave to appeal, and in her reply to the Tribunal, puts forward that she had to move to follow her spouse due to the distance she had to travel. She submits that she had just cause to leave her job since she found new employment on November 21, 2018. She is therefore only asking for 6 weeks of benefits. She wants her appeal to be reconsidered.

[14] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment **at the time she left**.

[15] Whether one has just cause to voluntarily leave an employment depends on whether she had no reasonable alternative to leaving having regard to all the circumstances, including several specific circumstances enumerated in section 29 of the *Employment Insurance Act* (EI Act).

[16] The General Division found that the Claimant had voluntarily left her employment to relocate so that she could live with her partner. It found that the Claimant had another reasonable alternative available to her other than leaving her employment when she did. Specifically, the General Division found that it would have been reasonable for the Claimant to continue to work in Toronto until she was able to find other employment that would allow her to relocate to live with her fiancé.

[17] The Claimant also stated before the General Division that her decision to quit her job and relocate was made in part because of the psychological support she needed to provide to her partner. However, the General Division noted that the Claimant and her partner were living together when he made the decision to relocate, knowing that the Claimant would not be able to relocate at the same time because of her job.

[18] The General Division concluded that the Claimant did not have just cause to voluntarily leave her employment and that she should be disqualified from receiving employment insurance benefits in accordance with section 30(1) of the EI Act.

[19] A constant jurisprudence has long established that leaving one's employment because of problems related to transportation and other personal reasons not related to employment does not constitute just cause pursuant to the EI Act.

[20] The Claimant, in her leave to appeal application would essentially like to represent her case to the Appeal Division. It is also well-established case law that an appeal to the Appeal Division is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[21] In her application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. She has not identified errors in law nor identified any erroneous findings of fact, which 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.

[22] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, The Tribunal finds 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

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| REPRESENTATIVE: | K. G., representative of the Applicant |
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