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

[TRANSLATION]

Citation: *J. B. v Canada Employment Insurance Commission*, 2019 SST 364

Tribunal File Number: AD-19-180

BETWEEN:

J. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 18, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. B. (Claimant), worked for the employer, X, as a part-time X for about 10 to 15 hours per week. In the summer of 2018, the Claimant asked the employer for more hours, but the employer could not guarantee him any more hours. Therefore, the Claimant applied to the [translation] "Student Project" program, which offered him a full-time job over the whole summer. Because of this, the Claimant left his part-time job on June 4, 2018, and started working full-time for a different employer on June 18, 2017, for a period of nine weeks until August 17, 2018.

[3] The Claimant initially applied for Employment Insurance regular benefits on August 31, 2018. The Canada Employment Insurance Commission (Commission) denied him benefits because he had left his employment on June 4, 2018, without just cause. After a request for reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant had reasonable assurance of another employment when he left his part-time employment for the full-time employment but that he had reasonable alternatives to leaving within the meaning of section 29(c) of the *Employment Insurance Act* (EI Act).

[5] The Claimant is now seeking leave from the Tribunal to appeal the General Division decision. He argues that the General Division based its decision on an erroneous finding that it made in a perverse or capricious manner without regard for the material before it.

[6] 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.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has 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 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, he must show that there is arguably a reviewable error based on which the appeal may 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 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 could 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 is now seeking leave from the Tribunal to appeal the General Division decision. He argues that the General Division failed to check with his third employer why he had not continued to work for them. He argues that he was laid off because of a shortage of work. Furthermore, he argues that he would have continued to work full-time if the third employer had undertaken his extension project.

[14] The issue before the General Division was to determine whether the Claimant had just cause for voluntarily leaving his employment at X under sections 29 and 30 of the EI Act.

[15] The General Division had to determine whether the Claimant had just cause for leaving his employment at X **by considering the facts that existed when he voluntarily left** on June 4, 2018.

[16] The undisputed evidence before the General Division shows that the Claimant left his part-time employment at X on June 4, 2018, to accept full-time employment for a period of nine weeks until August 17, 2018. When he left, he did not know that he would be hired July 15, 2018, by the third employer.

[17] Therefore, the Claimant left his part-time employment on June 4, 2018, knowing that his full-time employment would last only nine weeks.[1] Given the seasonal nature of his new employment, the Claimant took the risk of becoming unemployed when he decided to leave his employment at X.

[18] As the General Division noted, while it is legitimate for a person [translation] "to want to improve their life by changing employers or the nature of their work, they cannot expect those who contribute to the Employment Insurance fund to bear the cost of that

[1] GD3-25.

legitimate desire." Wanting to leave your employment to improve your situation does not constitute just cause within the meaning of section 29(c) of the EI Act.[2]

[19] Furthermore, a claimant's desire to improve their financial situation may constitute good cause, but it does not constitute just cause for leaving their employment under the EI Act.[3]

[20] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Ginette Kervin, Representative for the Applicant

[2] *Canada (Attorney General) v Langlois*, 2008 FCA 18; *Canada (Attorney General) v Langevin*, 2011 FCA 163.
[3] *Canada (Attorney General) v Richard*, 2009 FCA 122; *Canada (Attorney General) v Lapointe*, 2009 FCA 147.