



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

M. T. v Canada Employment Insurance Commission, 2019 SST 361

Tribunal File Number: AD-19-185

BETWEEN:

M. T.

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

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. T. (Claimant), filed an application for regular benefits. He advised the Respondent, the Canada Employment Insurance Commission (Commission), that he stopped working for the employer because of the distance from his place of residence. The Commission determined that the Claimant's decision to voluntarily leave his employment was not his only reasonable alternative. Furthermore, since the Claimant had not informed the Commission that he had stopped working for the employer, the Commission found that he had knowingly made a false or misleading statement, and it imposed a monetary penalty on him and issued a notice of violation. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Applicant had other reasonable alternatives to leaving his employment. It also found that the Claimant had knowingly made a false statement by not disclosing that he had left his employment. The General Division found that the Commission had exercised its discretion judicially in imposing a penalty and issuing a notice of violation to the Claimant.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[5] In support of his application for leave to appeal, the Claimant essentially repeats the testimony that he gave before the General Division.

[6] On March 15, 2018, the Tribunal asked the Claimant in writing to provide his 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*

(DESD Act). The Claimant responded to the Tribunal. He argues that the General Division lacked judgment and that it did not handle his case with enough care.

[7] 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.

[8] 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

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

ANALYSIS

[10] 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.

[11] 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.

[12] 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.

[13] 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?

[14] In support of his application for leave to appeal, the Claimant disagrees with the General Division's findings. He essentially repeats his version of events, which he has already submitted to the General Division for assessment.

[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 Tribunal notes that the General Division correctly stated the applicable legal test. It applied this test to the facts of the case and investigated whether, after considering all the circumstances, the Claimant had no reasonable alternative to leaving his employment.

[17] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issue of law, fact, or jurisdiction that could lead to the setting aside of the decision under review.

[18] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. T., self-represented
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