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

[TRANSLATION]

Citation: *E. D. v Canada Employment Insurance Commission*, 2019 SST 527

Tribunal File Number: AD-18-861

BETWEEN:

E. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 3, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, E. D. (Claimant), worked for the employer from June 5, 2000, to October 13, 2017. The Canada Employment Insurance Commission (Commission) determined that the Claimant did not have just cause for voluntarily leaving his employment with the employer. The Claimant explained that he had resigned as a company shareholder but that he had not resigned as an employee. He argued that he did not leave his employment voluntarily but rather had been dismissed by the employer. The Commission upheld its initial decision following a request for reconsideration. The Claimant appealed to the General Division.

[3] The General Division determined that the Claimant could have continued his employment with the employer but that he himself took the initiative of terminating the employment relationship. It found that a reasonable alternative would have been to make sure before leaving that he had found other employment that was more in line with his expectations or interests.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. Essentially, he is restating his position that his employer dismissed him after he resigned as a company shareholder, not as an employee.

[5] The Tribunal sent the Claimant a letter so that he could explain his grounds of appeal in detail. However, he did not respond to the Tribunal’s request.

[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 that the General Division may have made?

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal for 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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; instead, he must establish that his 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 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 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 issue before the General Division was to determine whether the Claimant had just cause for voluntarily leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[14] The General Division determined that the Claimant could have continued his employment with the employer but that he himself took the initiative of terminating his employment relationship. It found that a reasonable alternative would have been to make sure before leaving that he had found other employment that was more in line with his expectations or interests.

[15] The undisputed evidence before the General Division shows that the Claimant wanted to leave his employment to take on other challenges. The employer asked the Claimant to stay a few more months to oversee the transfer of files, to which the Claimant agreed. The employer then did an about-face and ended the Claimant's employment before the agreed departure date.[1]

[16] Employment Insurance case law has clearly established that a claimant whose employment is terminated because they gave notice of their intention to leave their job verbally, in writing, or by their actions is considered to have left their employment voluntarily within the meaning of the EI Act.

[17] As the General Division noted, the Claimant's dismissal cannot erase the fact that there was, first and foremost, voluntary leaving on the Claimant's part.[2] A reasonable alternative would have been for the Claimant to find other employment before informing his employer of his potential leaving.

[18] Unfortunately for the Claimant, an appeal to the Appeal Division is not a new hearing where a party can present their evidence again in the hopes of obtaining a new favourable decision.

[19] The Tribunal finds that, despite a specific request, the Claimant has not raised errors of jurisdiction or law or set out 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 reaching its decision.

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[1] GD3-26, GD3-38, GD3-39, and GD3-47.
[2] *Canada (Attorney General) v Côté*, 2006 FCA 219.

[20] On review of 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:	E. D., self-represented