



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *C. K. v Canada Employment Insurance Commission*, 2019 SST 606

Tribunal File Number: AD-19-371

BETWEEN:

C. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: June 25, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, C. K., applied for Employment Insurance benefits. He argues that he had to leave his job as a truck driver because of the conditions of his employment. He maintains that he did not voluntarily leave his job.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant voluntarily left his employment without just cause. The Applicant requested reconsideration. The Commission maintained its initial decision.

[4] The General Division found that: the Applicant voluntarily left his employment; there were reasonable alternatives to leaving his employment, so he did not have just cause; and he was properly disqualified from receiving EI benefits.

[5] The Applicant filed an application for leave to appeal with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division erred in law by treating his situation as a voluntarily leaving instead of finding that his work conditions were dangerous to his health.

[6] I find that the appeal does not have a reasonable chance of success because the Applicant simply repeats arguments he made to the General Division and does not disclose any reviewable errors.

ISSUE

[7] Is there an arguable case that the General Division made an error in law or a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

ANALYSIS

[8] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: 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] The Applicant submits that the General Division failed to take into account his personal circumstances and failed to understand that he did not voluntarily leave his employment.

Is there an arguable case that the General Division made an error of law or a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

[12] I find that there is no arguable case that the General Division erred in law.

[13] The General Division referred to and applied the legal principles and tests set out in binding jurisprudence on the issue of voluntary leaving.⁵

[14] The General Division correctly stated the binding jurisprudence and the applicable legal tests on all the issues in this matter, and, as a result, did not err in law.

¹ *Department of Employment and Social Development Act* (DESD Act) at ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v Canada (Attorney General)*, 2017 FC 363, at para. 22.

³ DESD Act at s 58(2).

⁴ *Ibid.* at s 58(1).

⁵ General Division decision at paras 3, 4, 8-10, and 28.

[15] The appeal has no reasonable chance of success based on this ground.

[16] In addition, I find that the General Division did not base 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.

[17] The General Division considered the evidence about the Applicant's assertion that his work conditions were dangerous for his health.⁶ The General Division considered the Applicant's circumstances. It also conducted a full analysis of the issues of the Applicant's separation from work in October 2018, the voluntary nature of this separation, and whether he had reasonable alternatives to leaving.

[18] The General Division found that the Applicant initiated the separation from his employment when he chose to leave his employment after his request for layoff was refused.⁷ Therefore, the Applicant voluntarily left his employment. In addition, the General Division took into account the Applicant's description of his working conditions and his reasons for leaving his job (driving and sleeping in a truck that smelled of exhaust fumes, repair history of the truck, length of driving runs, hours and days of work, his mental state and prior illness). The General Division also found that he had a number of reasonable alternatives to resigning when he did.

[19] The General Division did not make these findings in a perverse or capricious manner or without regard for the material before it. The General Division took the evidence in the documentary record into account. It also considered the testimony that the Applicant gave during the teleconference hearing.

[20] The Applicant's submissions before the General Division included each of the arguments in the application for leave to appeal and they were noted in the General Division decision. In essence, the Applicant seeks to reargue his case based on arguments similar to those he made at the General Division. A simple repetition of these arguments falls short of disclosing a ground of appeal that is based on a reviewable errors.

⁶ General Division decision at paras 11-19, 21-25, 27, and 29.

⁷ *Ibid.* at para 6.

[21] The appeal has no reasonable chance of success based on these grounds.

CONCLUSION

[22] I am satisfied that the appeal has no reasonable chance of success, so the application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	C. K., self-represented
-----------------	-------------------------