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

[TRANSLATION]

Citation: *T. O. v Canada Employment Insurance Commission*, 2019 SST 700

Tribunal File Number: AD-19-486

BETWEEN:

T. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 5, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. O. (Claimant), applied for regular benefits. A benefit period was established. Soon after, the Claimant began new employment for a cleaning company. The Canada Employment Insurance Commission (Commission) determined that the Claimant's decision to voluntarily leave that employment was not the only reasonable alternative in her situation. The Commission upheld its decision on reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had voluntarily left her employment and that it was not the only reasonable alternative.

[4] In support of her application for leave to appeal, the Claimant essentially repeats her version of events and questions the General Division's findings.

[5] On July 17, 2019, the Tribunal asked the Claimant in writing to provide her 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). It then told her that it was insufficient to simply repeat her testimony before the General Division.

[6] In her response to the Tribunal, the Claimant indicates that she would like the Tribunal to review her situation because she did not leave her employment voluntarily. She argues that the employer did not have work for her when she finished her vacation replacement and that, as a result, she looked for other employment.

[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 at least one of Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

ISSUES

[9] Was the application for leave to appeal filed within the time permitted?

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

ANALYSIS

[11] 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.

[12] 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal may succeed.

[13] 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.

[14] 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 may lead to the setting aside of the decision under review.

Issue 1: Was the application for leave to appeal filed within the time permitted?

[15] No. The General Division decision was sent to the Claimant on May 21, 2019. The Claimant filed her application for leave to appeal only on July 30, 2019. However, the file shows that the Claimant made certain efforts with the Commission during the appeal period before asking for a form to appeal to the Appeal Division.

[16] In light of the circumstances in this case, the Tribunal finds that it is in the interest of justice to grant the Claimant an extension of time to apply for leave to appeal. The delay is not excessive, and the extension would not prejudice the Commission.[1]

Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[17] No. In support of her application for leave to appeal, the Claimant disagrees with the General Division's findings. She would like the Tribunal to review her situation because she did not leave her employment voluntarily. She argues that the employer did not have work for her when she finished her vacation replacement. Furthermore, she argues that she did not receive the notice of hearing from the General Division.

[18] The Tribunal notes from the file that the Claimant was duly summoned in an email dated April 10, 2019, to the May 2, 2019, hearing. The Claimant also emailed the Tribunal additional documents on April 15, 2019, after receiving the notice of hearing. Furthermore, she received the General Division decision—the decision she is now trying to appeal—by email. There was therefore no breach of natural justice.

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[1] *X (Re)*, 2014 FCA 249; *Grewal v Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

[19] The issue before the General Division was to determine whether the Claimant had just cause to voluntarily leave her employment with X under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[20] The evidence before the General Division shows that the Claimant accepted an on-call position as a cleaner for X. The Claimant initially told the Commission that this employment was to replace staff and that the employer then offered her few hours of work and she could not earn enough to live on. Furthermore, she had to travel to clients who were too far away, so she preferred to give up that employment. The Claimant wanted to focus on searching for more stable employment. The Record of Employment issued by the employer confirms the Claimant's voluntary leaving, not a shortage of work.

[21] As the General Division noted, the Claimant could have continued to work a few hours a day while looking for higher paying work that better suited her needs before leaving her employment with X, which she did not do. By leaving her employment, the Claimant caused her unemployment situation.

[22] The case law acknowledges that, while it is legitimate for a person 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 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.

[23] The Tribunal notes that, despite the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[24] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	T. O., self-represented