



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *F. T. v Canada Employment Insurance Commission*, 2019 SST 1032

Tribunal File Number: AD-19-606

BETWEEN:

F. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 15, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, F. T. (Claimant), worked as a cook for the employer X from July 6, 2018, to August 3, 2018. After working for another employer, the Claimant submitted a benefit renewal application on November 6, 2018. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not have just cause for voluntarily leaving his employment at X. The Claimant requested a reconsideration of the initial decision, but the decision was upheld. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that it was the Claimant's personal choice to leave and that his employer did not dismiss him. It found that the Claimant had reasonable alternatives to leaving his employment, such as discussing the situation with his employer or looking for other employment before leaving, which he did not do.

[4] The Claimant now seeks leave to appeal the General Division decision. In support of his application for leave to appeal, the Claimant is essentially repeating the version of the facts he submitted to the General Division that he did not voluntarily leave his employment and that the employer has no evidence that he resigned.

[5] On September 11, 2019, 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).

[6] In his response to the Tribunal, the Claimant has repeated his version of the facts to support his position that he did not voluntarily leave his employment. He argues that

the employer has no evidence that he resigned and that the employer failed to get back to him about his schedule.

[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 that 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; 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.

[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] The issue under appeal before the General Division was whether the Claimant had voluntarily left his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[15] The General Division found that, although there may have been a communication problem between the employer and the Claimant, the Claimant never received any indication from the employer that he did not have to return to work or that he was dismissed after August 2, 2018, or after his days off from August 3 to August 5, 2018.

[16] The General Division did not give weight to the Claimant's testimony that he expected the employer to give him his work schedule because he knew that he worked every day for at least 40 hours per week. It found that the Claimant knew that he had to return to work on August 6, 2018, and that it was not necessary for the employer to give him a work schedule.

[17] The General Division found that the Claimant had reasonable alternatives to leaving his employment, such as discussing the situation with his employer or looking for other employment before leaving.

[18] The Tribunal notes that the General Division correctly stated the applicable legal test. It applied the test to the facts that the Claimant gave and investigated whether, after considering all the circumstances, the Claimant had no reasonable alternative but to leave.

[19] Based on the information on file, the General Division found that the Claimant did not have just cause for voluntarily leaving his employment because he had reasonable alternatives to leaving his employment at that time.

[20] Consistent case law states that a claimant whose employment is terminated because they gave their employer notice of their intention to leave their employment verbally, in writing, **or by their actions** must be considered as having left their employment voluntarily under the EI Act, even if they later express a desire to remain in their employment or change their mind.

[21] The Claimant had to return to work, and he did not do so. Therefore, the employer was justified in considering that the Claimant had voluntarily left his employment through his actions.

[22] Unfortunately for the Claimant, 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.

[23] 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.

[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:	F. T., self-represented
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