



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. H. v Canada Employment Insurance Commission*, 2019 SST 1355

Tribunal File Number: AD-19-685

BETWEEN:

D. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 21, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. H. (Claimant), worked as a custodian for three days and then left his employment. The Canada Employment Insurance Commission (Commission) determined that the Claimant did not have just cause for leaving his employment because leaving was not his only reasonable alternative. After a request for reconsideration, the Commission upheld its initial decision. 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 took the initiative of ending 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.

[4] The Claimant now seeks leave to appeal the General Division decision. He restates that there was no question of work hours being cut when he was hired.

[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 the General Division may have made?

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) it erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) it based its decision on an erroneous finding of fact 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 has 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 justify setting aside 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*.

[14] The General Division determined that the Claimant could have continued his employment with the employer but that he took the initiative of ending 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] As noted by the General Division, the Claimant could have continued to work while looking for a higher-paying job that better suited his needs, which he did not do. By leaving his employment, the Claimant caused his unemployment situation.

[16] The case law recognizes 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.

[17] Despite the Tribunal's specific request, the Claimant has not raised any errors of jurisdiction or law or set out any 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.

[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:	D. H., self-represented
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