



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2020 SST 201

Tribunal File Number: AD-20-132

BETWEEN:

R. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 5, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. B. (Claimant), left his job because the Employer gave him a written warning about his attendance, which he felt was unfair. He also felt that he was the victim of discrimination because of his disability. He applied for EI benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he voluntarily left his employment without just cause. After reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant voluntarily quit his job. It also determined that he had other reasonable alternatives to quitting his job when he did. The General Division concluded that the Claimant voluntarily left his employment without just cause.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant puts forward that the General Division rendered a decision without considering the evidence before it.

[6] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

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

- (a) the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it had 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. The Claimant must meet this initial hurdle, but it is lower than the one of the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

[11] In other words, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success in appeal, in order to grant leave.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] The Claimant puts forward that the General Division refused to consider his evidence of discrimination based on his disability and that it did not consider that the Employer had failed to accommodate him. The Claimant also puts forward that the

General Division did not consider that the Employer treated him unfairly regarding the medical benefits package. He argues that the General Division erred when it concluded that he did not have just cause to leave his job.

[13] The General Division had to determine whether the Claimant had just cause to voluntarily leave his employment. This must be determined at the time he left.

[14] Whether one had just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances.

[15] The General Division found that based on the Claimant's statements in September and October 2019, and the Employer's statements to the Commission, it was more likely the Claimant initiated his separation from employment when he left work on August 9, 2019, and did not return.

[16] The General Division considered the Claimant's evidence. It found that the Claimant had not demonstrated that he was facing discrimination due to his disability at the time he left his employment. It found that the examples the Claimant gave about the supervisor's behaviour did not show that he was subject to discrimination because of his disability. Rather, the examples did not seem related to the Claimant's disability in any way. The General Division also found that the evidence did not support the Claimant's claim that the refusal to upgrade his medical insurance had something to do with his disability.

[17] The General Division found that the Claimant left his job and did not return because he felt the Employer treated him unfairly when he received a written warning for his attendance at work. The Employer's written warning had a list of fourteen dates the Claimant was late or absent from work in the last six months of his employment.

[18] A claimant whose employment is terminated because he gives his employer notice of intention to leave employment, verbally, in writing or by his actions, must be considered to have left his employment voluntarily under the *Employment Insurance Act*, even if he later expresses a desire to remain in his employment and/or changes his mind.

[19] The General Division also found that the Claimant had reasonable alternatives available to quitting at the time that he left his job. He could have addressed his health concerns with the Employer. He could have benefited from the Employee Assistance Program. If ultimately, he was dissatisfied with the Employer's response, he could have looked for another job while still employed.

[20] Case law has constantly held that a claimant who is dissatisfied with his working conditions must attempt to settle the issues with the employer and seek alternative employment prior to leaving. He must also discuss his health issues with his employer prior to leaving his employment.

[21] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[22] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. B., Self-represented
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