



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. M. v Canada Employment Insurance Commission*, 2020 SST 605

Tribunal File Number: AD-20-571

BETWEEN:

C. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 1, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal the General Division's March 4, 2020, decision dismissing the application to rescind or amend.

OVERVIEW

[2] The Applicant, C. M. (Claimant), had a permanent part-time job. In June 2019, she decided to go to university in September 2019. The Claimant applied and was accepted into the post-secondary program "Training and Labour" so that her university year would be considered as instructor-led training.

[3] The Claimant also wanted to find a full-time job to improve her situation because her part-time job was not enough to provide for herself and pay for university. She found a job as a summer camp coordinator for a period of eight weeks. This job gave her a better salary and experience in her field of study.

[4] The Claimant therefore left her part-time job on June 18, 2019. She started working full-time on June 25, 2019, until August 16, 2019. The Claimant then filed an initial claim for regular benefits on August 18, 2019. The Canada Employment Insurance Commission (Commission) denied the Claimant benefits. It decided that the Claimant had voluntarily left her employment on June 18, 2019, without just cause. The Claimant appealed the Commission's decision to the General Division.

[5] The General Division determined that the Claimant had reasonable assurance of another employment in the immediate future. However, it found that the Claimant did not have just cause for leaving her employment because she caused her unemployment situation by leaving her permanent job for a seasonal job.

[6] Furthermore, the General Division determined that the desire to improve her situation is not just cause for leaving her employment. It found that the Claimant had not demonstrated that there were no reasonable alternatives to leaving.

[7] The Claimant then filed an application to rescind or amend the General Division's decision. The General Division dismissed the Claimant's application.

[8] The Claimant now wants leave to appeal the General Division's decision dismissing her application to rescind or amend.

[9] The Tribunal must determine 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.

[10] The Tribunal refuses leave to appeal the General Division's March 4, 2020, decision dismissing the application to rescind or amend.

ISSUE

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

ANALYSIS

[12] 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 made in a perverse or capricious manner or without regard for the material before it.

[13] An application for leave to appeal is a preliminary step to a hearing on the merits. 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; instead, she must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, she must establish that there is an arguable case that there is a reviewable error based on which the appeal has a reasonable chance of success.

[14] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal raised by the Claimant has a reasonable chance of success.

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

[15] The Claimant argues that the evidence that was before the General Division in support of her application to rescind or amend demonstrates that she left her employment because her working conditions were intolerable. She argues that she did not submit this evidence before the General Division at the beginning for fear of retaliation by her former supervisor.

[16] The General Division found that it had no basis to rescind or amend the initial decision under section 66 of the DESD Act.

[17] Section 66 of the DESD Act states the following:

66 (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if

(a) in the case of a decision relating to the *Employment Insurance Act*, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact[.]

[18] The test to determine whether “new facts” were presented to the General Division within the meaning of this provision is long established. “[N]ew facts,” for the purpose of a reconsideration of a General Division decision, are facts that happened after the decision was made or happened before but could not have been discovered by a claimant acting diligently, and, in both cases, the new facts must be decisive of the issue.

[19] The Claimant had the burden of demonstrating that she had just cause for leaving her employment. It was her responsibility to present all the evidence in her possession supporting her decision to leave her employment when the General Division heard her appeal.

[20] As the General Division decided, the Applicant's explanations, as well as the other documents she submitted with her application to rescind or amend, do not constitute new facts. The facts raised happened and were known by the Applicant well before the General Division decision.

[21] The Tribunal finds that the Claimant stated on more than one occasion that she had accepted a full-time job for a period of eight weeks because she was starting school in September and did not want to work during the school year. The Claimant also said that the main reasons for her voluntary leaving were a better salary, more hours of work, obtaining a position of responsibility related to her field of study, and less distance to travel to work.

[22] The Claimant argues that she did not raise the facts about her working conditions before the General Division for fear of retaliation by her supervisor. However, the Claimant had already told the Commission about certain working conditions that she found intolerable. She could have completed her evidence before the General Division at the appropriate time and not after an unfavourable decision.

[23] The Tribunal also finds that the Claimant indicated in her notice of appeal to the General Division that she had left her employment to improve her living conditions and her future and not because of her working conditions.

[24] Therefore, the General Division's initial decision was not made without knowledge of, or was not based on a mistake as to, some material fact.

[25] With her application to rescind or amend, the Claimant is trying to present a new appeal to the General Division. The purpose of section 66 of the DESD Act is certainly

not to allow a claimant to restart their appeal when the General Division has already made a decision on that appeal.

[26] After reviewing the appeal file, the General Division decision on the application to rescind or amend its initial decision, and the Claimant's arguments in support of her application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not presented a ground of appeal that falls within the specified grounds and that could lead to the setting aside of the decision under review.

CONCLUSION

[27] The Tribunal refuses leave to appeal to the Appeal Division the General Division's March 4, 2020, decision dismissing the application to rescind or amend.

Pierre Lafontaine
Member, Appeal Division

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| REPRESENTATIVE: | C. M., self-represented |
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