



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *WW v Canada Employment Insurance Commission*, 2020 SST 1028

Tribunal File Number: AD-20-837

BETWEEN:

W. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 8, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) received notice from the Respondent, the Canada Employment Insurance Commission (Commission), that he could not receive regular benefits starting July 7, 2019, because he voluntarily left his employment without just cause within the meaning of section 29 of the *Employment Insurance Act* (EI Act). The Commission also notified the Claimant of a penalty for not reporting the voluntary leave while collecting benefits.

[3] The Claimant requested that the Commission reconsider its decision. The Commission maintained the voluntary leave decision but reduced the monetary penalty to a warning. The Claimant appealed the Commission's reconsideration decision to the General Division.

[4] The General Division found that the employer did not grant the Claimant leave of absence. It determined that he had quit his job and that he had reasonable alternatives to quitting his employment when he did. The General Division found that the Claimant could have looked for work prior to leaving his job or seek medical advice. It concluded that he did not have just cause to leave his employment. The General Division also concluded that the Claimant had knowingly failed to disclose the voluntary leave and that the Commission had exercised its discretion in a judicial manner when issuing a warning to the Claimant rather than the original monetary penalty.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he disagrees with the General Division because it failed to consider his position.

[6] On November 19, 2020, the Tribunal sent a letter to the Claimant requesting that he explain in detail his grounds of appeal. The Claimant did not reply to the Tribunal's request within the allowed period.

[7] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

ANALYSIS

[10] 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
- e) 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.

[11] 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 his case but must establish that the appeal has a reasonable chance

of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before leave can be granted, I need 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.

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

[13] The Applicant, in his application for leave to appeal, submits that the he disagrees with the General Division because it did not consider his point of view.

[14] Before the General Division, the Claimant stated that he did not quit his job but that he took a three months leave of absence to settle family issues that where causing him a great deal of anxiety and stress. He stated that he had no choice but to leave his X job in order to obtain legal aid and attend family court proceedings in X.

[15] The General Division found that the evidence did not support a conclusion that the Claimant had an obligation to care for a member of the immediate family and that there was a necessity for the Claimant to provide care when he decided to quit his job. The evidence shows that the Claimant's children were living with their mother at the time he decided to leave his employment.

[16] The General Division further found that the employer did not grant the Claimant leave of absence and that he never followed the company rules to obtain leave. It found that he had quit his job and that he had reasonable alternatives to quitting his employment.

[17] The General Division acknowledged that the Claimant was going through stressful issues but found that the Claimant had reasonable alternatives available to him other than leave his employment when he did. He could have continued his employment and sought out a leave or other employment prior to quitting. He could have sought medical advice.

[18] Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[19] Furthermore, the EI program does not intend to benefit those who elect for personal reasons not to remain employed or those who lose their employment by their own actions.

[20] As stated by the General Division, the Claimant made a personal choice to end his employment, which perhaps was a good personal choice for him at that time. However, a good personal choice does not establish just cause for leaving employment pursuant to section 29 of the EI Act.

[21] The General Division also concluded that the Claimant had knowingly failed to disclose the voluntary leave and that the Commission had exercised its discretion in a judicial manner when issuing a warning rather than the original monetary penalty.

[22] The evidence shows that the Claimant was in full possession of the facts when he failed to declare he had voluntarily left his job. He took the decision to leave his employment in order to obtain legal aid in X while receiving benefits. Based on this evidence, the General Division had no choice but to conclude that a penalty was justified pursuant to section 38 of the EI Act. The evidence also shows that the Commission exercised its discretion in a judicial manner when issuing a warning rather than the original monetary penalty.

[23] I find that 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.

[24] 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, I 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

REPRESENTATIVES:	W. W., Self-represented
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