



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MN v Canada Employment Insurance Commission*, 2021 SST 151

Tribunal File Number: AD-21-74

BETWEEN:

M. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 14, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) worked at a restaurant and then applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant quit his job and that he did not have just cause for leaving his job. It therefore disqualified the Claimant.

[3] The Claimant argued that he did not quit his job but that he took take days off because the employer made mistakes with his pay and tax documents. After reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant voluntarily left his job. It also found 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. He submits that he did not quit his job and that the paystubs filed by the employer are insufficient and wrong.

[6] A letter was sent to the Claimant asking him to give in details the reasons why he was appealing the General Division decision in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). The Claimant put forward that 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.

[7] I must decide whether the Claimant raised 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 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.

[11] 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.

[12] In other words, before I can grant leave, 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 in appeal, in order to grant leave.

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

[13] In support of his application for leave to appeal, the Claimant submits that the General Division did not consider that he only took take days off because the employer made mistakes with his pay and tax documents. He puts forward that he did not quit his job. The Claimant further submits that the employer messed up his Record of Employment and that it put too much money on his T-4. He asked his employer to fix the T-4 income slip and then he would go back to work for them.

[14] 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.

[15] 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.

[16] The General Division found that the Claimant left his job. It gave more weight to the employer's declaration that the Claimant had quit his job. The employer also declared that there was work for the Claimant if he had not refused to come to work. The General Division also considered that the Claimant initially declared in his application for benefits that he had in fact quit his job.

[17] The General Division determined that there was no evidence that the employer had done anything illegal with the Claimant's pay or deductions. It also determined that there was no evidence that the employer had broken a promise to pay the Claimant's personal taxes.

[18] The General Division considered that the Claimant initially declared to the Commission that the employer was supposed to be paying part of the pay with all the deductions and the other part was supposed to be in cash. However, the employer gave him a T4 with the full amount of the payroll. He was not happy that the employer put too much money on his T-4 and having to pay income taxes at the end of the year.

[19] The employer confirmed to the Commission that it refused to pay the Claimant in cash and that he was upset about that.

[20] The General Division further determined that the Claimant did not attempt to settle the issues with his employer or look for another job prior to leaving his employment. It found that the Claimant 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.

[21] 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. The Claimant did neither.

[22] The Claimant, in his leave to appeal application, would essentially like to represent his case. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can represent evidence and hope for a new favorable outcome.

[23] 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

REPRESENTATIVE:	M. N., Self-represented
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