

Citation: *I. D. v. Canada Employment Insurance Commission*, 2015 SSTAD 325

Appeal No. AD-14-451

BETWEEN:

**I. D.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 9, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On July 10, 2014, the General Division of the Tribunal determined that:

- The Applicant had lost his job by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on August 13, 2014.

## **ISSUE**

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

## **THE LAW**

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the “*DESD Act*”), “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *DESD Act* provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## **ANALYSIS**

[7] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal 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) 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.

[8] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal 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, before leave can be granted.

[9] The Applicant pleads, in his application for leave to appeal, that the General Division based its decision on an erroneous finding of facts that it made in a perverse or capricious manner or without regard for the material before it.

[10] He states that the decision of the General Division is based on fouts statements (facts and their interpretation) provided by his former employer to the Respondent initially and repeatedly used by Board of Referees, Office of Umpire and Tribunal as a basis for their decisions and that these statements should not be considered as “evidence”.

[11] He argues that his evidence, supported by internal emails, outside organizations letters and pictures, was repeatedly rejected by Commission, Board of Referees, Office of the Umpire and was acknowledged but intentionally disregarded as trivial details by the General Division.

[12] The Tribunal takes notice that the General Division addressed at great length in its decision the evidence of the Applicant and in particular his response to A. M. as required by the previous decision of the Federal Court of Appeal rendered in the present file.

[13] The Tribunal also notices that the conclusion of misconduct of the General Division is based on the Applicant's own statements and admissions, more particularly:

- He stated that he felt it was misconduct when he arrived in a brace and crutches on April Fool's day after a five day suspension where he was told that the next incident resulting in disciplinary action would lead to his dismissal;
- He stated that he wouldn't do that again today since he is more rational.
- He stated that after speaking with his union representative, he was suggested that maybe he did not have a good reason to bring the coffee break issue with the letters to the safety meeting, and yet he chose to introduce it anyway;
- He stated that he felt his manager was ashamed and embarrassed when he told him he had a gift for him and then presented him with a timer at the security meeting;
- He admitted that maybe he could have gone back and talked to the Senior Manager, privately to resolve the issue; but he chose not to do that;
- He admitted that he had received one and two day suspensions prior to the five days suspension.

[14] The Applicant, in his application for leave to appeal, is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[15] In view of the above, the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

## **CONCLUSION**

[16] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division