

Citation: *Canada Employment Insurance Commission v. P. M.*, 2015 SSTAD 386

Appeal No. AD-14-493

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**P. M.**

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 20, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On August 25, 2014, the General Division of the Tribunal determined that:

- The Respondent did not lose his employment 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 September 11, 2014.

## **ISSUES**

[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 submits that the evidence reveals that the Respondent triggered his own unemployment when he lost his driver's license due to a DUI conviction and was no longer able to fulfil his duties as a truck driver. The SST-GD erred in law when it failed to apply the legal test for misconduct to all the evidence and erred in fact and in law when it failed to determine if the Respondent triggered the loss of his employment due to an act of misconduct. The Applicant further submits that based on the evidence before the SST-GD, its decision is unreasonable.

[10] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[11] The appeal raises questions regarding the interpretation and application by the General Division of sections 29 and 30 of the *Act*. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[12] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division