

Citation: *Canada Employment Insurance Commission v. C. H.*, 2015 SSTAD 468

Appeal No. AD-14-545

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

C. H.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: April 8, 2015

DECISION

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

INTRODUCTION

[2] On October 23, 2014, the General Division of the Tribunal determined that:

- The Applicant 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 October 30, 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 submits that the SST-GD erred in fact and law in allowing the Respondent's appeal and its decision is not reasonable given the facts of the case.

[10] The Applicant argues that the Respondent, an Advanced Care Paramedic, was dismissed due to a breach of employer policies as well as his professional code of conduct when he took a picture of a co-worker who was a patient being admitted to the hospital. According to the Applicant, his actions constitute misconduct pursuant to s. 30 of the *Act*. The Applicant submits that the Respondent was well aware of the employer policies concerning conduct, including a 'use of multi-media in the workplace' policy which prohibited the use of cell phones, cameras etc. He would have been aware that a breach of said policies impaired his performance as an Advanced Care Paramedic and could result in his dismissal.

[11] 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. 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