

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. M. D.*, 2015 SSTAD 719

Date: June 9, 2015

File number: AD-15-243

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

M. D.

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

DECISION

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

INTRODUCTION

[2] On April 20, 2015, the Tribunal's General Division found that:

- The Respondent had not lost his employment because of his own misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* ("the Act").

[3] The Applicant filed an application for leave to appeal to the Appeal Division on May 7, 2015.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, "[a]n 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 *Department of Employment and Social Development Act* provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal 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 or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove its case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that any of the above grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In its application for leave to appeal, the Applicant submits that the evidence on file clearly shows that the Respondent was dismissed in August 2014 because he no longer met the requirements of his position after he lost his driver's licence as a result of impaired driving.

[13] It argues that the Federal Court of Appeal has confirmed that alcoholism does not excuse misconduct. It submits that a drinking problem in no way negates the voluntary nature of the acts committed. The consumption of alcohol is voluntary, and the Respondent had to be conscious of his acts and aware of the effects of such consumption and the consequences that could result.

[14] It further submits that there is no medical evidence on file to show that the Respondent's conduct was not wilful. The Respondent therefore maintains that the General Division could not conclude that the Respondent's conduct was not wilful.

[15] After reviewing the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question relating to the General Division's interpretation and application of sections 29 and 30 of the *Act*, the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division