

[TRANSLATION]

Citation: *R. Y. v. Canada Employment Insurance Commission*, 2015 SSTAD 847

Date: July 3, 2015

File number: AD-15-336

APPEAL DIVISION

Between:

R. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

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

- The Applicant lost his employment by reason of his own misconduct under sections 29 and 30 of the *Employment Insurance Act* (the Act).

[3] On June 2, 2015, the Applicant filed an application for leave to appeal with the Appeal Division.

ISSUE

[4] The Tribunal must decide whether 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*, "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 *Department of Employment and Social Development 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] In accordance with 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, 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] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is convinced that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

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

[12] In his application for leave to appeal, the Applicant maintains that:

- The General Division erred in law in making its decision, whether or not the error appears on the face of the record, by taking into account the actions before the start of the employment relationship, thus contradicting the position taken by Marceau J. in *Smith A-875-96* and the position of the member of the Social Security Tribunal in *P.J. v. Canada Employment Insurance Commission*, 2013 SSTGDEI 7 and *O. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 25;

- 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, by accepting a version of the claimant's testimony that contradicted his statements during the hearing on several key points.

[13] After reviewing the appeal docket, the General Division's decision and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised a question concerning the General Division's interpretation and application of sections 29 and 30 of the Act that might justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division