

[TRANSLATION]

Citation: *Y. L. v. Canada Employment Insurance Commission*, 2015 SSTAD 1077

Date: September 12, 2015

File number: AD-15-860

APPEAL DIVISION

Between:

Y. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Tele-Mobile Company

Added Party

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal (the Tribunal) grants leave to appeal before its Appeal Division.

INTRODUCTION

[2] On June 26, 2015, the Tribunal's General Division determined the following:

- The Applicant had lost his employment because of his misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act).

[3] The Applicant filed an application for leave to appeal before the Appeal Division on July 21, 2015. He was informed of the decision on June 29, 2015.

ISSUE

[4] The Tribunal must decide 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*, "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* states that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] Pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are as follows:

- (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;
- (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 is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Applicant does not have to prove his case.

[9] Leave to appeal is granted if the Tribunal is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be able to determine, under 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] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In his application for leave to appeal, the Applicant submitted that the General Division erroneously concluded that the employer discharged its burden of proving misconduct.

[13] He also submitted that the General Division allowed Exhibits GDS-1 to GDS-70 to be produced after the hearing. However, the Applicant argued that he was not made aware of this documentation before the hearing, and he was therefore deprived of his right to a full answer and defence. Furthermore, he submitted that the employer's representative was unable to adequately testify and be cross-examined on these documents, given that they were produced after the hearing.

[14] He submitted that the General Division failed to observe a principle of natural justice because he had been unable to cross-examine the employer's representative on key facts.

[15] Lastly, the Applicant submitted that the General Division wrongly refused to allow him to produce audio evidence at the hearing, evidence that he considered relevant.

[16] After reviewing the appeal file, the decision of the General Division and the arguments made in support of the application for leave to appeal, the Tribunal determines that the appeal has a reasonable chance of success. The Applicant raised several questions whose responses might justify setting aside the decision under review.

CONCLUSION

[17] The Tribunal grants leave to appeal before the Appeal Division.

Pierre Lafontaine
Member, Appeal Division