

**[TRANSLATION]**

**Citation: *G. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 1121**

**Date: September 21, 2015**

**File No.: AD-15-853**

**APPEAL DIVISION**

**Between:**

**G. M.**

**Applicant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision rendered 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 June 11, 2015, the Tribunal's General Division concluded that:

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

[3] On July 15, 2015, the Applicant filed an application for leave to appeal to 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 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] 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 satisfied 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 submits that:

- he filed a grievance against his employer for psychological harassment and abuse of the exercise of his managerial rights;
- the General Division never wanted to consider the employer's discrimination and reprisals against the Applicant from the perspective of a plan to constructively dismiss the Applicant;
- the General Division accepted the Respondent's arguments in their entirety, relying essentially on the employer's allegations on termination, which the Applicant disputed before the appropriate administrative tribunals (grievances and complaint before the CRT), the proceedings of which are still pending hearings for a ruling;

- the General Division systematically rejected the Applicant's arguments despite the supporting documentation and ample documentary evidence filed by the Applicant;
- the General Division founded its conclusion in a capricious manner, without regard for the evidence submitted to it by the Applicant.

[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 several questions of natural justice, fact and law concerning the notion of misconduct whose responses 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