

[TRANSLATION]

Citation: *R. L. v. Canada Employment Insurance Commission*, 2015 SSTAD 1375

Date: November 30, 2015

File number: AD-15-1241

APPEAL DIVISION

Between:

R. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

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 October 16, 2015, the Tribunal's General Division concluded as follows:

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

[3] On November 20, 2015, the Applicant filed an application for leave to appeal before the Appeal Division. He received notice of the decision on October 22, 2015.

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 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 section 58(1) of the 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 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, 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 leave stage, the Applicant does not have to prove his or her case.

[9] The Tribunal grants 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 able to determine, pursuant to subsection 58(1) of the 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 he did not lose his employment because of his misconduct. He submitted that the act of which he was accused by the employer was not so careless or negligent that one could say the Applicant wilfully decided not to consider how his actions would affect his performance, as required by *Tucker*.

[13] He argued that, by committing the alleged act, he did not know and could not have known that his conduct was such as to impede the performance of his duties and that, as a result, his dismissal was a real possibility, contrary to what is required by *Canada (AG) v. Hastings*, 2007 FCA 372.

[14] 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 concludes that the appeal has a reasonable chance of success. The Applicant raised questions of fact and law concerning the notion of misconduct under the Act whose responses might justify setting aside the decision under review.

CONCLUSION

[15] The Tribunal grants leave to appeal before its Appeal Division.

Pierre Lafontaine

Member, Appeal Division