Citation: ***H. K. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1406**

Date: December 8, 2015

File number: AD-15-878

APPEAL DIVISION

Between:

H. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] On July 13, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) held a hearing in this matter, determined that the claimant voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (EI Act) and dismissed his appeal regarding a disqualification imposed pursuant to sections 29 and 30 of the EI Act. The decision of the GD was dated July 14, 2015 and was issued on July 16, 2015.

[2] The Applicant stated that he tried to call into the teleconference for his hearing using the instructions in the Notice of Hearing, however the telephone line kept disconnecting. He called the toll-free Tribunal number the following day, on July 14, 2015, to explain his absence from the hearing and to ask to reschedule the hearing. He was told that if he failed to attend a scheduled hearing without prior notice, the Tribunal Member may have proceeded in his absence. He asked for a call back to be informed on how to proceed. He received a call back on July 22, 2015, after the GD decision had been issued, and was advised that a decision had already been made based on the information available and that he could appeal it to the Appeal Division (AD).

[3] The Applicant filed an Application for Leave to Appeal (Application) to the AD of the Tribunal on July 24, 2015, within the 30 day limit.

ISSUE

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[5] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division, in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant, and the Appeal Division may allow further time within which an application for leave is to be made, but in no case may an

application be made more than one year after the day on which the decision is communicated to the appellant.

[6] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD 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”.

[7] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[8] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

(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.

[9] The Tribunal must be satisfied that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] The Applicant, without citing the section, referred in the Application to one of the grounds of appeal in subsection 58(1) of the DESD Act, namely, subsection 58(1)(c), errors in the findings of fact as it related to the termination of his employment. The material in the file also disclose another potential ground of appeal, under subsection 58(1)(a), a possible breach of natural justice, specifically the right to be heard.

[11] The GD decision states that the Applicant was notified of the hearing and that the notice was successfully delivered and signed for by the Applicant. It also states that the GD Member

waited for fifteen minutes for the Applicant to join the conference call before the call was terminated.

[12] The Respondent was not present at the hearing, although it did file written representations for the GD's consideration. The decision was made based on information from the docket including the Respondent's representations and information from the employer.

[13] The Applicant asserts, in the Application, that he was wrongfully terminated and that he was forced into signing termination papers. He did not have the opportunity to present his side of the situation, which appears to be in conflict with some of the information in the docket.

[14] In addition, the Applicant notified the Tribunal on July 14, 2015 that he had had technical difficulties connecting to the teleconference line and asked for another hearing date. There is a telephone log, in the file, of the Applicant's call on July 14, 2015 marked "URGENT – Hearing Issue". The log is dated July 15, 2015 and confirms the telephone call on July 14. It is not clear from the file whether the GD Member was notified of the Applicant's urgent phone call on July 14, 2015 or not, or if or when the Member saw the telephone log. While the GD decision is dated July 14, 2015, it was issued on July 16, 2015.

[15] Given the fundamental nature of the right to be heard, the conflicting information asserted, the Applicant's attempt to attend the hearing and his having notified the Tribunal of the technical problems he had trying to connect to the teleconference line, the situation warrants further review. For these reasons, I am satisfied that the appeal has a reasonable chance of success.

[16] Considering the grounds for appeal raised by the Applicant and my review of the decision of the GD and the file, I grant the application for leave to appeal.

CONCLUSION

[17] The application for leave to appeal is granted.

[18] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[19] I invite the parties to make submissions on whether a hearing is appropriate and, if it is, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division