



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 50

Tribunal File Number: AD-15-1338

BETWEEN:

**A. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

and

**Fluid Seafoods Inc.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division – Late Application and Leave to appeal decision**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 28, 2016

## **REASONS AND DECISION**

### **DECISION**

[1] The Tribunal allows the late application but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

### **INTRODUCTION**

[2] On October 19, 2015, the General Division of the Tribunal determined that:

- The Applicant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on December 10, 2015.

### **ISSUES**

[4] The Tribunal must decide if it will allow the late application and if 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* (the “*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”.

[6] 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”.

## ANALYSIS

[7] 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.

[8] In regards to the late application for permission to appeal, the Applicant states that there was a death in the family, his father passed away and he was in mourning and very distressed therefore he was late in replying. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal since the delay is not excessive and will not cause prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] In regards to the application for leave to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success before leave can be granted.

[10] The General Division found that the Applicant created a conflict of interest when he purchased part of a Company and then decided on behalf of said Company that the Employer would not be repaid on its outstanding debt until his commission monies were repaid.

[11] The General Division also found that he acted in conflict with his Employer's interests when he continued to sell (on behalf of his Employer) to a vendor, which he was planning on acquiring. By so acting, the General Division concluded that the Appellant breached many of his duties to his Employer, including, the duties of respect, honesty and loyalty.

[12] After receiving the application for permission to appeal of the Applicant, the Tribunal requested that the Applicant provide in detail why he is appealing the decision of the General Division (Letter from the Tribunal dated December 22, 2015).

[13] The Applicant replied to the Tribunal on January 22, 2016 (AD1-B1 to AD1-B9).

[14] In his reply to the Tribunal and in support of his leave to appeal application, the Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[15] Unfortunately for the Applicant, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[16] The Applicant, although requested in writing by the Tribunal, has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[17] Furthermore, the General Division is the pivot of the entire system put in place by the *Act* for the purpose of verifying and interpreting the facts and make an assessment on the issue before it. It is not bound by decisions of the CRT and NDT.

[18] After review of the appeal file, the decision of the General Division and the arguments of the Applicant in support of his application for leave to appeal, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[19] The Tribunal allows the late application but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division