



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 228

Tribunal File Number: AD-16-553

BETWEEN:

J. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Vupoint Systems Ltd.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to appeal decision

DECISION BY:: Pierre Lafontaine

DATE OF DECISION: April 22, 2016

REASONS AND DECISION

DECISION

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On March 11, 2016, the General Division of the Tribunal determined that:

- The Applicant 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 April 11, 2016 after receiving the decision of the General Division on March 22, 2016.

ISSUE

[4] The Tribunal must decide 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 application for permission 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.

[9] The Applicant argues in his application for permission to appeal that the General Division rendered its decision without regard for the material before it. He submits that the General Division ignored emails and details regarding emails that he supplied contradicting the position of the employer. He argues that the decision from the General Division was based on speculation and hearsay and that there was no proof that he violated any company policies that would have resulted in termination of employment.

[10] He also disputes the finding of the General Division on his credibility since it is based on a wrong interpretation of his representations to the Tribunal.

[11] He also submits that the Crown withdrew the theft charges against him on April 1st, 2016, after the hearing before the General Division.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[13] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division