



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. Y. v. Canada Employment Insurance Commission*, 2016 SSTADEI 265

Tribunal File Number: AD-16-506

BETWEEN:

P. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal decision

DECISION BY:: Pierre Lafontaine

DATE OF DECISION: May 20, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 14, 2015, the General Division of the Tribunal determined that:

- The Applicant left his employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act* (the “Act”);
- The imposition of a penalty was justified in accordance with section 38 of the *Act* for making a misrepresentation by knowingly providing false or misleading information to the Respondent;
- A notice of violation was issued in accordance with section 7.1 of the *Act*.

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on January 13, 2016 since he supplied his grounds of appeal less than 30 days after being requested by the Tribunal.

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 submitted his detailed grounds of appeal after being requested to do so by the Tribunal. He submits that the General Division erred in fact and in law when it dismissed his appeal and failed to observe a principal of natural justice pursuant to section 58(1)(a), (b) and (c) of the *DESD Act*.

[10] The Applicant submits that the decision of the General Division is based on speculation or suspicion and not facts. He pleads that he was not given all the evidence prior to the hearing held by the General Division and that he was not given the opportunity to cross-examine the Employer.

[11] He further submits that the General Division erred when it considered the second temporary job as the main first job. He also argues that the General Division did not consider in its decision all his arguments related to the reasons why he left this second job.

[12] He further pleads that the Respondent did not exercise its discretion judicially in reviewing his application for benefits.

[13] 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.

[14] 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

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

Pierre Lafontaine

Member, Appeal Division