



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. W. v. Canada Employment Insurance Commission*, 2016 SSTADEI 288

Tribunal File Number: AD-16-665

BETWEEN:

D. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Grace Canada, Inc

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division– Leave to Appeal decision

DECISION BY:: Pierre Lafontaine

DATE OF DECISION: May 31, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 11, 2016, 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 May 5, 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] The Applicant needs to satisfy the Tribunal 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] In his application for leave to appeal, the Applicant states that he disagrees with the decision of the General Division. He proceeds to write in detail his version of events and proceeds to review and reject the facts submitted by the Employer. He submits that the General Division ignored his evidence and the *Act*.

[10] The General Division found that the Applicant's continued failure to abide to the Employer's delegated authority over the years, and specifically during the event of June 17, 2015, was insubordination and that insubordination constitutes misconduct under the *Act*.

[11] In his application for leave to appeal, the Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was already submitted to 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 to explore the merits of the decision of the General Division.

[12] The Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. It 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.

[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 no reasonable chance of success.

CONCLUSION

[14] The Application is refused.

Pierre Lafontaine

Member, Appeal Division