



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Y. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 335

Tribunal File Number: AD-16-717

BETWEEN:

**Y. P.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division– Leave to Appeal Decision**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 24, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On April 20, 2016, the General Division determined that the Applicant lost his job by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on May 20, 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 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 to appeal can be granted.

[9] In this case, the General Division concluded that the Applicant had lost his employment by reason of his own misconduct.

[10] The Applicant, in his application for leave to appeal, states that the General Division failed to consider his state of mental health in determining if there was misconduct on his part and whether it was willful in determining mitigating circumstances. He pleads that he was terminated by his employer while he was on modified duties following an injury and that he has filed a claim against his employer for wrongful dismissal (Exhibits AD1B-3 to AD1B-13). He further submits that the General Division erred in only considering the version of events of the employer and that it did not properly consider his version of events in its finding of facts.

[11] 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**

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

*Pierre Lafontaine*

Member, Appeal Division