



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 339

Tribunal File Number: AD-16-813

BETWEEN:

**S. T.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**Eve Technologies Corp**

Added Party

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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 27, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On May 9, 2016, the General Division determined that the Applicant voluntarily left her employment without just cause 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 June 15, 2016 after receiving communication of the decision of the General Division on May 16, 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 had to decide if the Applicant had voluntarily left her employment without just cause.

[10] The Applicant, in her application for leave, states that the General Division failed to respect a principle of natural justice when it did not consider its request to exclude the employer's witnesses from the proceeding except for their testimony. The Applicant pleads that she was interrupted and prevented from presenting her position on a motion to exclude witnesses. The Applicant argues that it was an important breach since the credibility of the witnesses was anticipated by the General Division to be a prevailing issue.

[11] The Applicant submits that the question of the exclusion of witnesses from a hearing, other than in the giving of their testimony, is one of natural justice and procedural fairness. She further submits that she had a fundamental right to be heard on this issue prior to the General Division making a ruling.

[12] The Applicant finally submits that the General Division erred in law when it concluded that because a hearing is open to the public, witnesses have a right to be in attendance throughout a hearing.

[13] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her 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**

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

*Pierre Lafontaine*

Member, Appeal Division