Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *R. T. v. Canada Employment Insurance Commission,* 2016 SSTADEI 362

Tribunal File Number: AD-16-315

BETWEEN:

R. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Leave to Appeal
Appeal Division

DECISION BY: Mark Borer

DATE OF DECISION: July 8, 2016

Canada

DECISION

[1] Previously, a member of the General Division dismissed the Applicant's appeal from the previous determination of the Commission. In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* states that the only grounds of appeal are that:

> (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.

[3] The Act also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success."

[4] This is a case of alleged misconduct.

[5] In his initial application the Applicant re-stated arguments that he had previously made before the General Division and submitted that an erroneous finding of fact had been made. He also provided additional documents, including the reasons for a decision by Alberta Jobs, Skills, Training and Labour which appears to have found that the Applicant was unjustly dismissed ("the Alberta decision"). Some of the factual findings in this decision are contrary to some of the findings of the General Division.

[6] Because of the lack of specifics regarding what error (if any) was alleged to have been made by the General Division, I directed Tribunal staff to contact the Applicant by letter and ask for further details. Specifically, the Tribunal letter asked that the Applicant provide full and detailed grounds of appeal as required by the Act, and provided examples

of what constitutes grounds of appeal. The Tribunal letter also noted that if this was not done, the application could be refused without further notice.

[7] The Applicant did not respond.

[8] Even if I were to accept that the Alberta decision constituted new evidence which should be admitted and considered, I note that it was rendered under an entirely different legal regime (Alberta employment standards law) than that which the General Division is required to apply (the *Employment Insurance Act*). Not infrequently, an employee who was improperly dismissed according to provincial legislation is still deemed to have committed misconduct according to the *Employment Insurance Act*, because the laws are very different and serve different objectives.

[9] Due to the above, I find that even if I were to fully accept the factual findings in the Alberta decision as true and accurate I fail to see in what manner the General Division is alleged to have erred.

[10] Further, I note that the Alberta decision found that as the surveillance footage provided as evidence was grainy, there was no proof that it was the Applicant who had stolen fuel from his Employer, and that therefore he could not be justly dismissed on that basis.

[11] Unfortunately for the Applicant, this finding appears to be contradicted by a letter submitted to the Tribunal by the Applicant himself (found at Exhibit AD1B – 7). This letter, from an acquaintance of the Applicant, states that he and the Applicant had "purchased 20 litres of gasoline to replace same amount that [the Applicant] borrowed from [the Employer]… I witnessed the return of the fuel."

[12] Borrowed or stolen, this letter seems to admit that (contrary to the Alberta decision) the Applicant did indeed take the fuel from his Employer and calls into question the Alberta decision as a whole.

[13] With regards to this application, although it is clear that the Applicant disagrees with the General Division decision that he committed misconduct, I find that the Applicant's

submissions do not identify a ground of appeal that has a reasonable chance of success. In essence, this application is a request that I re-weigh the evidence and come to a different conclusion.

[14] This I cannot do.

[15] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the Act has been made by the General Division and if so to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not our role to re-hear the case *de novo*.

[16] In order to have a reasonable chance of success, the Applicant must explain in some detail how in their view at least one reviewable error set out in the Act has been made. Having failed to do so, this application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer
Member, Appeal Division