



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. F. v. Canada Employment Insurance Commission*, 2016 SSTADEI 376

Tribunal File Number: AD-16-890

BETWEEN:

A. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 15, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 27, 2016, the Tribunal's General Division held that the Applicant lost his employment by reason of his misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* ("the Act").

[3] The Applicant filed an application for leave to appeal before the Appeal Division on June 30, 2016, after receiving the General Division's decision dated June 2, 2016.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* ("the DESD Act") provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove his case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact, or jurisdiction to which the response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant claims in his application for leave to appeal that the General Division erroneously made a finding of misconduct within the meaning of sections 29 and 30 of the Act.

[13] The Applicant contends that the General Division committed a breach of a principle of natural justice by stating in its decision that there were no witnesses to corroborate his version of the events, whereas the General Division had never informed him that that was prejudicial to his case. Furthermore, the General Division imposed a burden of proof on him that was heavier than and different from that of the balance of probabilities.

[14] The Appellant also contends that the General Division erred in finding that there was a causal link between his dismissal and the events of July 2015. He claims that the facts show that he was dismissed on other grounds. He claims that he has also filed a grievance disputing his dismissal.

[15] Upon review of the appeal filed, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raises a question the answer to which might result in the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division