



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 394

Tribunal File Number: AD-16-681

BETWEEN:

**C. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 25, 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 12, 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 11, 2016 after receiving communication of the decision of the General Division on April 15, 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 can be granted.

[9] The Applicant argues that he was arrested and charged for an assault that allegedly occurred outside a bar. He pleads that he was not the assailant and the police made a mistake. He has no idea why he was refused bail since he had no prior criminal record and it was a minor offence. He later pleaded guilty in order to go back to his job but found out he had been dismissed. He was falsely accused since another individual was charged and convicted of the offence he pleaded guilty to. Since he did nothing wrong, this does not constitute misconduct.

[10] 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 explore the merits of the decision of the General Division.

[11] Unfortunately, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[12] The undisputed evidence before the General Division is that the Applicant could not go to work since he was incarcerated. He later pleaded guilty to the infraction and was immediately released. He then found out that his employer dismissed him for violating the

employer's attendance policy. There is no evidence before the General Division that the Applicant's guilty plea was withdrawn by the criminal court.

[13] Therefore, the Applicant in his leave application has not identified any errors of jurisdiction or 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.

[14] 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**

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

*Pierre Lafontaine*

Member, Appeal Division

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Member, Appeal Division