



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. P. G.*, 2016 SSTADEI 407

Tribunal File Number: AD-16-975

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**P. G.**

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: August 10, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On July 11, 2016, the General Division of the Tribunal determined that:

- The Applicant did not lose his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act (Act)*.

[3] The Applicant requested leave to appeal to the Appeal Division on July 29, 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 (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] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above 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 submits that the medical evidence in this case, although confirming the Respondent's ongoing medical issues, fails to support that he was not in control of his actions. Furthermore, the Respondent stated that he had discarded flyers in retaliation to the employer denying him overtime. The Applicant pleads that a reasonable decision when applying the legislation for misconduct to the facts of the case is that the Applicant lost his employment due to his own misconduct. The Applicant submits that the Respondent held a position of trust owed to his employer and admits to discarding and delaying mail, which breached the employer code of conduct policy. Holding a position as a mail carrier, he should have reasonably known that dismissal was a real possibility.

[10] The Applicant also submits that the General Division placed too much weight on medical evidence which did not support that the Respondent's illness at the time of his actions removed the element of wilfulness. The Applicant argues that actions which one admits to being intentional can only reasonably be said to be wilful.

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