



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 405

Tribunal File Number: AD-16-577

BETWEEN:

R. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

9091-8558 Québec Inc

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to appeal decision by: Shu-Tai Cheng

Date of decision: August 5, 2016

REASONS AND DECISION

INTRODUCTION

[1] On March 9, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The Applicant, the employer's representative, and the employer's witness attended the hearing before the General Division.

[2] The General Division determined that:

- a) The issue is whether the claimant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).
- b) The onus was on the employer to establish that the Applicant had lost his employment by reason of his own misconduct.
- c) The Applicant admitted at the hearing that, when his employer called him into a meeting before his work shift in order to issue him a disciplinary notice, he had showed up intoxicated as a result of the high emotions that this meeting elicited.
- d) [*Translation*] "His conduct was so offensive that the employer had to call security. The police had to escort him home because he was refusing to leave the premises."
- e) From [*translation*] "2014 until April 7, 2015, at least 35 incidents have been reported. These incidents range from notes regarding losing equipment, complaints from unsatisfied clients, to unjustified absences."
- f) The Applicant's [*translation*] "actions were willful and were of such a careless or negligent nature that one could say that he wilfully decided not to take into account the repercussions of these acts on his job, which is the very definition of misconduct."

[3] For these reasons, the General Division allowed the employer's appeal.

File Background

[4] The Applicant received Employment Insurance benefits from the Canada Employment Insurance Commission (Respondent). It determined that the Applicant had not lost his employment as a result of his own misconduct.

[5] The employer requested a reconsideration of this decision. On July 29, 2015, the Respondent upheld its initial decision.

[6] The employer appealed this decision to the General Division.

[7] The General Division held an in-person hearing on January 26, 2016. The General Division rendered its decision on March 9, 2016. The Applicant received this decision on March 14, 2016.

[8] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on April 18, 2016.

[9] In his Application, the Applicant notes that:

(a) [*Translation*] "[T]he facts provided by my employer are false."

(b) A [*translation*] "file is currently opened with labour standards."

(c) In order to grant leave to appeal, the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must first find that, were the matter to proceed to a hearing, at least one of the grounds of the Application relate to a ground of appeal.

[10] The Tribunal's letter dated May 2, 2016, requests information needed to complete the Application. Specifically, the letter states the following:

Information required to complete your application

To complete the application, the Tribunal needs the following information in writing:

- **Reasons for your appeal:**

Explain in detail **why** you are appealing the decision of the General Division. Only the following 3 reasons can be considered under the law:

Reason #1: ***The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.*** For example, an appellant submitted a Record of Employment and the document was not included in the appeal file.

Reason #2: ***The General Division made an error in law in its decision.*** For example: the Member of the General Division based its decision on the wrong section of the applicable law.

Reason #3: ***The General Division made an important error regarding the facts contained in the appeal file.*** For example, the member of the General Division indicated in the decision that there was no Record of Employment submitted by the appellant, when one had been submitted and was in the appeal file.

Please identify the reason(s) which apply to the case and provide as much detail as possible. It is not sufficient to simply indicate that there was an error or that natural justice was not respected. You must explain what the error was or how natural justice was not respected. You can refer to specific pages of documents on file or to paragraphs in the General Division decision.

- **Why the Appeal Division should give you permission to file an appeal:**

You must first request the permission of the Appeal Division to file an appeal. In addition to identifying the reasons for the appeal, you must also explain why the application to the Appeal Division has a reasonable chance of success.

Timeframe for providing the missing information

The Tribunal must receive the missing information identified above in writing together with any submissions you wish to file by June 2, 2016. Please keep in mind, if insufficient detail is submitted, the member assigned to the file may decide the matter in dispute on the basis of the material filed as of June 2, 2016, without further notice. If the member decides that a further hearing is required, a Notice of Hearing will be sent to the parties.

[11] The Applicant did not submit the missing information to the Tribunal.

ISSUE

[12] Does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

[13] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), “[a]n 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”.

[14] 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.”

[15] 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.

[16] The Tribunal grants leave to appeal if it is satisfied that the Applicant demonstrates that one of the aforementioned grounds of appeal has a reasonable chance of success.

[17] 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, or relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[18] The Applicant refers to paragraphs 58(1)(a), (b) and (c) of the DESD Act to identify his grounds for appeal. According to the reasons for his appeal, he states that the facts submitted by his employer are false and that there is a file currently opened with labour standards. Additional information was requested from the Applicant, but he did not respond to this request.

[19] It is not up to the Appeal Division member, who has to determine whether to grant leave to appeal, to reweigh and reassess the evidence submitted before the General Division. Based on my reading of the file and the General Division's decision, the reasons that the Applicant has brought up in his Application—that the facts submitted by his employer are false and that he is contesting the labour standards—have already been brought forth before the General Division.

[20] Mere repetition of the arguments already made before the General Division is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[21] An appeal is not a new hearing on the merits of the Applicant's claim for Employment Insurance benefits. This is a request for reconsideration on the employer's part.

[22] I find that the General Division did not base 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.

[23] The General Division's decision refers to sections of the Act and the Regulations on applicable reconsiderations and to jurisprudence relevant to a request for reconsideration filed late. The General Division applied the law to the Applicant's situation. The decision does not contain an error in law.

[24] Furthermore, the Applicant refers to a breach in natural justice or a jurisdiction error on the part of the General Division without providing further details.

[25] Given that the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the DESD Act, the appeal has no reasonable chance of success.

CONCLUSION

[26] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division