



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. D. L.*, 2016 SSTADEI 425

Tribunal File Number: AD-16-1001

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

D. L.

Respondent

and

Le Géant Motorisé Inc.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal decision by: Pierre Lafontaine

Date of decision: August 18, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On July 22, 2016, the Tribunal's General Division found that the Respondent had not lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act (Act)*.

[3] On August 10, 2016, the Applicant filed an application for leave to appeal to the Appeal Division.

ISSUE

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

THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development 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”.

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The Board of Referees 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 their 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 *Department of Employment and Social Development 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 states that the General Division erred in law and that the decision it issued is inconsistent with the evidence before it and contravenes jurisprudence.

[13] The Applicant maintains that the General Division erred in its interpretation and application of subsection 30(1) of the Act. It had to determine whether the Respondent's alleged behaviour constituted misconduct; instead, it focused on justifying the Respondent's behaviour.

[14] The Applicant stated that the evidence shows that the Respondent had been warned that he would risk losing his job if he were to reoffend. He confirmed that he had been absent from work without contacting the President on the day of the absence, as was required in his disciplinary notice. Based on this evidence, the Applicant maintains that the General Division's decision was arbitrary.

[15] Finally, the Applicant stated that the General Division disregarded case law principles that attendance at work is an essential condition of the employer/employee employment contract.

[16] Upon review of the appeal file, 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 raised a question, the response to which could lead to the setting aside the decision challenged.

CONCLUSION

[17] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division