



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. S. T.*, 2016 SSTA DEI 440

Tribunal File Number: AD-16-1039

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**S. T.**

Respondent

and

**CSH Jardins de la Gare**

Added Party

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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 26, 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 26, 2016, the Tribunal's General Division found that the Respondent had not lost her employment by reason of her own misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On August 22, 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] In its application for leave to appeal, the Applicant submits that the General Division erred in interpreting subsection 30(1) of the Act. The Applicant states that the General Division unjustly focused on the type of financial transaction indicated in the code of ethics rather than the Respondent's alleged actions.

[13] It stated that a loan given to a resident, after they confided that they were going through financial trouble, constitutes financial solicitation, which contravenes the employer's code of ethics and thus constitutes misconduct within the meaning of the Act. Based on the evidence before it, it argued that the General Division's finding that the Respondent's behaviour would not have hindered the fulfillment of her employment obligations arbitrary.

[14] Finally, the Applicant stated that the General Division disregarded the case law principles that refer to misconduct as deliberate actions that prevent an individual from properly carrying out the duties for which they were hired and that breach the trust vital in an employer/employee relationship, even if these actions occurred outside of work.

[15] 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 has raised a question relating to the General Division's interpretation and application of sections 29 and 30 of the Act , the answer to which may lead to the setting aside of the decision challenged.

## **CONCLUSION**

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

*Pierre Lafontaine*

Member, Appeal Division