



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 537

Tribunal File Number: AD-16-1228

BETWEEN:

**L. S.**

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: November 2, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On September 26, 2016, the Tribunal's General Division found that the Applicant had lost his employment by reason of his own misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on October 25, 2016.

### **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 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the applicant to meet 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 his case.

[9] The Tribunal will grant leave to appeal if the Applicant shows 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 General Division reached a conclusion based on the evidence before it that the Appellant had lost his employment through his own fault because he was no longer able to drive and possession of a valid driver's licence was an essential condition to his employment. The Applicant had therefore failed to meet an explicit condition of his employment contract and this breach was a direct result of his misconduct.

[13] In support of his application for leave to appeal, the Applicant reiterated what he had already submitted to the General Division for review and assessment. Specifically, he recounted the issues he had with certain co-workers. However, as was noted by the General

Division, this is not the issue at bar. The General Division had to determine whether the Applicant was guilty of misconduct within the meaning of the Act.

[14] The Applicant also reiterated that he had been drugged while consuming alcohol. The General Division noted the lack of evidence to support this claim and was not convinced by the Applicant's testimony. It also noted that the Applicant plead guilty and acknowledged his criminal offence before the appropriate fora. The General Division found that, instead, the evidence showed, on a balance of probabilities, that the Applicant had voluntarily operated his vehicle after consuming an amount of alcohol beyond the legal limit.

[15] It is not up to the member who has to determine whether to grant leave to appeal to reweigh and reassess the evidence submitted before the General Division.

[16] On several occasions, the Federal Court of Appeal has established that employees who must hold a valid driver's licence as an essential occupational requirement lose their licence through their own fault would therefore fail to meet an explicit employment contract condition: *Canada (A.G.) v. Wasylka*, 2004 FCA 219; *Canada (A.G.) v. Cooper*, 2003 FCA 389; *Casey v. Canada (A.G.)*, 2001 FCA 375; *Canada (A.G.) v. Cartier*, 2001 FCA 274; *Canada (A.G.) v. Turgeon*, A-582-98.

[17] 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 no reasonable chance of success. The Applicant does not raise any question of law, fact, or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

## **CONCLUSION**

[18] Leave to appeal is refused.

Pierre Lafontaine,  
Member, Appeal Division