



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *H. H. v. Canada Employment Insurance Commission*, 2017 SSTADEI 19

Tribunal File Number: AD-17-32

BETWEEN:

**H. H.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**Exclusive Transfer Enterprise**

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: January 23, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On December 10, 2016, the General Division of the Tribunal determined that the Applicant left his employment without just cause in accordance with sections 29 and 30 of the *Employment Insurance Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on January 12, 2017, after receiving communication of the decision of the General Division on December 15, 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* (the “*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 Applicant needs to satisfy the Tribunal that the reasons for appeal fall within any of the above mentioned 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 General Division erred in law in making its decision, whether or not the error appears on the face of the record and that the decision of the General Division is based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[10] The Applicant submits that the undisputed facts on file show that there was an argument, from which he removed himself, and upon “cooling off”, prepared to commence his assigned duties. He pleads that this is not a case where an employee has failed to call or report for work, but rather where an employee was absent from the workplace for a very short period, before his shift was scheduled to begin. At no time did he verbally, or in writing, quit his job. The employer merely assumed this to be the case and when he returned to work, it was the employer who chose to sever the employment relationship, not him.

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[12] 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**

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

Pierre Lafontaine

Member, Appeal Division