



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 61

Tribunal File Number: AD-17-123

BETWEEN:

H. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of decision: February 15, 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 28, 2016, the General Division of the Tribunal determined that the Applicant lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on February 7, 2017 after receiving communication of the General Division decision on January 9, 2017.

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* (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 Tribunal needs to be satisfied 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 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. The Applicant pleads that the General Division erred when it concluded that he was ordered to return to work by September 22, 2015.

[10] He argues that the return date was open to his discretion and that the employer never contested the date he had chosen to return to work. It was only when he came back to work on the agreed date that he was fired by his employer. He submits that the employer simply fired him not to deal with an employee on sick leave. He also submits that the General Division based its decision on speculation and not facts when it concluded that he should have stayed home to receive the letters of the employer.

[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. 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

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

Pierre Lafontaine

Member, Appeal Division