



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canadian Food Inspection Agency v. Canada Employment Insurance Commission*,  
2017 SSTADEI 81

Tribunal File Number: AD-17-161

BETWEEN:

**Canadian Food Inspection Agency**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**D. R.**

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: March 6, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On January 13, 2017, the General Division of the Tribunal determined that the Claimant did not lose his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act). The Applicant requested leave to appeal to the Appeal Division on February 17, 2017, after receiving communication of the General Division decision on January 18, 2017.

### **ISSUE**

[3] The Tribunal must decide if the appeal has a reasonable chance of success.

### **THE LAW**

[4] 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”.

[5] 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**

[6] 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.

[7] 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.

[8] The Applicant submits that the General Division erred in law by failing to properly address the portion of the legal test dealing with the Claimant's conduct; namely whether the Claimant's conduct had impaired the performance of the duties owed to his employer to such an extent that dismissal was a real possibility. The Applicant pleads that the General Division also erred in law by focusing on whether the employer had given the Claimant "an opportunity to improve his behaviour before he was dismissed" [para. 37 of the Decision], when the only relevant inquiry was whether the Claimant lost his job because of his own misconduct.

[9] The Applicant argues that the General Division erred in fact in finding that the Claimant's cancer was responsible for most of the actions questioned by the employer [para. 40 of the Decision], when the evidence at the hearing was that most of the actions questioned by the employer involved the Claimant lying to management, which cannot be explained by the Claimant's cancer.

[10] The Applicant submits that the General Division failed to observe a principle of natural justice, when it decided to hold the hearing by teleconference. The General Division decided to hold the hearing by teleconference (in part), because "credibility was not anticipated to be a prevailing issue" [para. 8 of the Decision], when based on the employer's Investigation Report which was before the General Division, it should have been clear that the Claimant's credibility was very much a prevailing issue.

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its 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