



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 100

Tribunal File Number: AD-17-126

BETWEEN:

L. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 15, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 27, 2016, the General Division of the Tribunal determined that the Applicant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on February 8, 2017, after receiving communication of the decision on November 8, 2016.

ISSUES

[4] The Tribunal must decide whether it will allow the late application and whether 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 “[l]eave 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 late application for permission to appeal, the Tribunal considers that the Applicant seemed confused following the information he had received over the telephone on the proper procedure to follow after the decision of the General Division. He did, however, file an application to rescind or amend the decision of the General Division within the legal delay. The application was dismissed on January 10, 2017. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal without prejudice to the Respondent – *X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] In regards to the 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.

[10] In his application for leave to appeal, the Applicant disputes the findings of the Respondent and submits that he was not given a fair hearing by his employer. He states that he lost benefits because of this situation and that he now needs more hours to qualify.

[11] On February 10, 2017, the Applicant was sent a letter by the Tribunal requesting that he explain in detail why he was appealing the decision of the General Division. The Applicant replied on February 23, 2017.

[12] The Applicant further submitted that the Respondent should have initially investigated his application for benefits more carefully when he was applying for benefits. He feels that he was dismissed from his employment unjustly. He was verbally told by his employer that he was being dismissed from employment due to non-compliance with their safety policy. However, he had never received a copy of his Record of Employment. Once his claim for Employment Insurance benefits had been processed by the Respondent, it was noted that he had lost his employment because of his own misconduct. He absolutely disagrees with the decision of the Respondent.

[13] The Applicant also submitted that he had filed new information to support his claim, which was not taken into consideration by the General Division.

[14] When it dismissed the appeal, the General Division concluded that:

[27] It was the issue with the Appellant committing a very serious safety violation that led to his dismissal.

[28] This immediately severed the trust relationship between the Appellant and the employer.

[29] The employer had a zero tolerance policy for this therefore it wouldn't make a difference if they were any other incidents as he would have been dismissed right away without notice.

[30] The employer had provided a copy of the witness statements from both the Appellant and the employee who reported the incident. On his statement which he signed, it stated that he left at 4:10 am to catch the ferry and he signed the employees out who were still in the confined space. GD3-39

[31] His actions were confirmed at his hearing when he testified he did nothing wrong by signing them out, they should have left when he did so.

[15] The notion of willful misconduct does not imply that it is necessary that the breach of conduct be the result of a wrongful intent; it is sufficient that the misconduct be conscious, deliberate or intentional.

[16] Furthermore, the role of the General Division is to determine whether the employee's conduct amounted to misconduct within the meaning of the *Employment Insurance Act* and not whether the severity of the penalty imposed by the employer was justified or whether the employee's conduct was a valid ground for dismissal – *Canada (Attorney General) v. Lemire*, 2010 FCA 314 (CanLII).

[17] The Applicant relies heavily on the decision of the Labour Relations Board dated October 26, 2016. However, this decision does not support his position. The Board found only that the union had acted in an arbitrary manner by failing to communicate to the Applicant the union's decision not to file a grievance on his behalf with respect to his termination of employment.

[18] Unfortunately for the Applicant, he has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has neither identified errors in law nor identified any erroneous findings of fact that the General Division, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[19] After reviewing the docket of appeal and the decision of the General Division, as well as considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant has not set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[20] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division