



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 110

Tribunal File Number: AD-17-222

BETWEEN:

H. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 17, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On February 13, 2017, the General Division of the Tribunal concluded that the Applicant 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 March 14, 2017, after receiving the General Division decision on February 22, 2017.

ISSUE

[4] The Tribunal must decide 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] Regarding the application for leave 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 argues that the General Division either misapprehended the drug and alcohol policy as prohibiting the use of drugs outside of work, or it found impairment in the absence of any evidence. He pleads that he did not attend work impaired by any drug. His use of marijuana well preceded the date of the incident. He submits that, given that there was no policy prohibiting the use of drugs outside of work and that he was not impaired by drugs or alcohol at work, there is no misconduct. He submits that the General Division decision was clearly erroneous.

[10] After reviewing the appeal docket and the decision of the General Division, and after considering the Applicant's arguments of 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 that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[11] The Tribunal grants leave to appeal to the Appeal Division of the Tribunal.

Pierre Lafontaine
Member, Appeal Division