



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 119

Tribunal File Number: AD-17-121

BETWEEN:

**D. C.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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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 24, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On December 29, 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 is deemed to have requested leave to appeal to the Appeal Division on February 7, 2017, after receiving the General Division decision on January 9, 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] 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] In his application for leave to appeal, the Applicant states that he has compelling/undisputable (video/audio) evidence to strongly support and/or reinforce the allegations of bullying, harassment, discrimination and noxious treatment that he received/endured immediately following his workplace injury. He believes that if all the evidence that has been submitted to the General Division is considered in an unbiased, impartial, fair and proper fashion, a righteous and just decision will be rendered. As a result, his well-deserved and untimely entitlements that he paid into will be awarded in a truly fair and proper fashion.

[10] On February 16, 2017, the Tribunal sent a correspondence to the Applicant requesting that he explain in detail by March 17, 2017, why he was appealing the General Division decision that concluded that he had lost his employment because of his own misconduct. The Applicant replied to the Tribunal on March 17, 2017.

[11] In his reply, the Applicant states that he submitted more than enough material to support his case. He reiterates that the General Division acted in a biased and/or partial fashion and failed to consider/observe the material evidence provided in its entirety and make a fair and proper decision based on the material facts. He submits that the material evidence that he has provided to the General Division contradicts the employer/Respondent's allegations tenfold. He has not engaged in misconduct, contrary to the employer's assertions; it was he who was repeatedly and continues to be victimized the longer his entitlements are withheld.

[12] He pleads that he worked for his entitlements and that he deserves them. He is asking the Appeal Division to re-evaluate the material evidence that was previously provided and the material mentioned in his appeal.

[13] The Tribunal, in determining whether the appeal has a reasonable chance of success, will only consider the evidence that was filed before the General Division, in accordance with subsection 58(1) of the DESD Act.

[14] The Applicant, in support of his application for leave to appeal, proceeds to focus on the employer's behavior toward him after he sustained a working injury. However, as stated by the General Division, the question is not whether the employer was guilty of misconduct by dismissing the Applicant such that this would constitute an unjust dismissal, but whether the Applicant was guilty of misconduct and whether this misconduct resulted in losing his employment—*Canada (Attorney General) v. McNamara*, 2007 FCA 107; *Fleming v. Canada (Attorney General)*, 2006 FCA 16.

[15] It is well-established law that the onus of proof is with the employer and the Respondent to show, on a balance of probabilities, and not beyond a reasonable doubt, that the Applicant lost his employment due to misconduct—*Canada (Attorney General) v. Larivée*, 2007 FCA 312; *Canada (Attorney General) v. Falardeau*, A-396-85.

[16] The mere existence of a concluded settlement agreement is not of itself determinative of whether an employee was dismissed for misconduct. It is for the General Division to assess the evidence and come to a decision. It is not bound by how the employer and employee or a third party may characterize the grounds on which an employment has been terminated.

[17] The General Division concluded, from the evidence before it, that the Applicant's harassing and intimidating management, union members and co-workers as well as defacing company property constituted misconduct within the meaning of the Act. The General Division found the Respondent's and the employer's evidence to be credible and assigned more weight to the testimony they provided.

[18] The Applicant, in his leave to appeal application, is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division, which is the province of the trier of fact and not of an appeal court. It is not for the member deciding whether to grant leave to appeal to reweigh the evidence or to explore the merits of the decision of the General Division.

[19] In his application for leave to appeal, and reply to the Tribunal, the Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

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

## **CONCLUSION**

[21] The application is refused.

Pierre Lafontaine  
Member, Appeal Division