



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. W. v. Canada Employment Insurance Commission*, 2017 SSTADEI 120

Tribunal File Number: AD-17-61

BETWEEN:

R. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 24, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On November 9, 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 January 23, 2017, after receiving the General Division decision on November 19, 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 regard to the late application for permission to appeal, the Applicant states that he was late in receiving the forms to fill out and return to the Tribunal. 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] Regarding 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 states that the General Division decision is based on one phone call saying he was fired from his job. He was not told he was fired and he did not receive any written correspondence saying he was fired. He was told to go home for a trip and that he would be called for the next trip. His employer told him to go home, but told the Respondent he was fired. That is discrimination. He was not the only one on the boat that had been drinking and he feels that his superior has something against him.

[11] On January 26, 2017, the Tribunal sent a correspondence to the Applicant requesting that he explain in detail by February 27, 2017, why he was appealing the General Division decision that concluded that he had lost his employment because of his own misconduct. To this day, the Applicant has not replied to the Tribunal's request.

[12] The General Division found that the Respondent and the employer had shown, as the onus was on them to do so, that the Applicant's actions were willful to the point that he would /could assume they would lead to his dismissal. The Applicant knew the rules around alcohol consumption and chose to ignore them while in transit to the vessel.

[13] 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 explore the merits of the General Division decision.

[14] In his application for leave to appeal, 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.

[15] After reviewing the appeal docket and the General Division 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

[16] The application is refused.

Pierre Lafontaine
Member, Appeal Division