



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. O. I.*, 2017 SSTADEI 139

Tribunal File Number: AD-17-262

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

O. I.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 3, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On March 6, 2017, the General Division of the Tribunal determined that the Respondent had not lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on March 27, 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] In regards to the application for permission to appeal, before leave can be granted, 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.

[9] The Applicant submits that the General Division erred in law when it failed to consider all the evidence before it and that it failed to explain why it rejected that evidence and gave preference to the Respondent's testimony. The evidence on file does not support the General Division's finding, which makes its decision unreasonable.

[10] The Applicant pleads that the General Division failed to adequately assess the facts of the case and properly address the question under appeal. A copy on file of the exchanged emails clearly shows that the Respondent used the employees channel to claim the charges for his personal phone to be waived. He used an aggressive tone and made threats. The Respondent admitted to having sent the threatening email. The evidence established that the Respondent's actions were deliberate and wilful, as well as being in violation of the employer's policy, which is part of the appeal file. The Appellant argues that it has been established in the jurisprudence that violent or threatening behaviour, whether in the workplace or outside of it, constitutes misconduct.

[11] After reviewing the docket of appeal and the General Division's decision, in addition to considering the Applicant's arguments 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 that 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