



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 178

Tribunal File Number: AD-17-183

BETWEEN:

**C. D.**

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: May 2, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On January 25, 2017, the Tribunal's General Division concluded 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 presumed to have requested leave to appeal to the Appeal Division on February 28, 2017, after receiving the General Division's decision on January 31, 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, in his application for leave, states that the employer did not provide any written evidence in support of its position. The excuse given by the employer to avoid filing evidence was false. He argues that there was no threat of a lawsuit at the time of the employer's excuses. If the employer was so afraid of providing written evidence, it would not have given verbal testimony to the Respondent. He states that when he requested Employment Insurance benefits, his employer was out for revenge because he had filed a harassment complaint against his manager.

[10] On March 14, 2017, the Tribunal sent a letter to the Applicant requesting that he fully detail his grounds of appeal by April 14, 2017. He was also advised that repeating his version of events before the Appeal Division was insufficient. No reply was received from the Applicant.

[11] The General Division found from the evidence that the Applicant had breached the employer's policy and that he had received ample warning as to the consequences of his continued frivolous use of the harassment policy. It further concluded that the essential elements for a finding of misconduct existed.

[12] The Applicant is now 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's decision.

[13] Even though there was no written proof of events from the employer, the General Division preferred the employer's evidence. It found that the employer's submissions were even confirmed by the Applicant in a detailed and extensive review of the issues and allegations, including e-mails that the Applicant had allegedly sent to the employer (GD3-59 to GD3-77). Additional information further confirmed the employer's version of events when the Applicant answered the Respondent's questions regarding fourteen incidents and twelve e-mails (GD3-78 to GD3-84).

[14] Unfortunately for the Applicant, he has not identified any failure by the General Division to observe a principle of natural justice, nor any errors of jurisdiction or law, or any erroneous findings of fact that 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'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.

## **CONCLUSION**

[16] The application for leave to appeal is refused.

Pierre Lafontaine  
Member, Appeal Division