



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *A. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 192

Tribunal File Number: AD-17-147

BETWEEN:

**A. M.**

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 9, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On January 31, 2017, the Tribunal's General Division 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 filed an application for leave to appeal to the Appeal Division on February 14, 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 leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

### **ANALYSIS**

[7] According to subsection 58(1) of DESD Act, 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above-mentioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be able to determine whether there is a question of law, fact or jurisdiction, the answer to which may justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant, relying on his application for leave to appeal, argues that the Respondent did not inform the General Division in a timely manner of the employer's amended Record of Employment, which reports a termination of the Applicant's employment on grounds other than misconduct. He argues that reviewing this evidence is necessary to respect the principles of natural justice and to determine his eligibility for benefits.

[13] The Tribunal notes that it would have been preferable for the Applicant to proceed with a request to rescind or amend the General Division's decision, in accordance with the terms of section 66 of the DESD Act. However, since the General Division member who

rendered the decision is no longer an active member, it is appropriate to grant leave to appeal.

[14] After reviewing the appeal docket, the General Division's decision and the Applicant's arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

## **CONCLUSION**

[15] The Tribunal grants leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine  
Member, Appeal Division