



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 230

Tribunal File Number: AD-17-423

BETWEEN:

E. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 12, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 27, 2017, the Tribunal's General Division found that the Applicant had lost his employment by reason of his own misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On May 30, 2017, the Applicant filed an application for leave to appeal to the Appeal Division after having received the General Division's decision on May 2, 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] According to subsection 58(1) of the Act, the following are the only grounds of appeal:

- 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 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 in a position 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] In his application for leave to appeal, the Applicant submits the following:

- The General Division member's decision does not meet the requirements of the Act, namely, it seems to ignore direct testimonies in support of the appeal in favour of that of the employer, who was absent from the hearing and who refused to submit evidence as to why he dismissed the Applicant.

- The General Division member's decision does not meet the requirements of the Act, namely because in the absence of direct testimony from a representative of the employer and evidence that only active members of the union were subject to disciplinary sanctions and evidence of said employer's behaviour declaring to be against Quebec law regarding respect for the right of association, the conclusions rejecting this aspect of the real cause for Applicant's dismissal are clearly insufficient. In fact, these show a clear refusal to take these aspects into consideration.
- The General Division member's decision is erroneous in law with regard to the quality of adequate evidence when an employer cites an offence as the reason for dismissal, which is not one of the grounds set out.
- The General Division member's decision is erroneous in law because it considers only the employer's opinion credible with respect to the events in dispute.
- The General Division member's decision is erroneous in law regarding the conclusion that something was stolen from the employer, when we might ask about the ownership of said bottles of wine.
- The General Division member's decision is erroneous in law because its analysis of the evidence appears to give the benefit of the doubt to the employer by favouring his testimony over that of the Applicant.
- The General Division member's decision errs in fact and in law regarding the quality of adequate evidence of the employer citing an offence as the reason for dismissal, particularly where there is evidence of anti-union behaviour from the employer and where the Applicant submits that the reason given by the employer is not the real cause of his dismissal.

- The General Division member's decision errs in fact and in law in relying on the union position to support the alleged knowledge of the directive, when the Applicant denies the scope of that directive given by the employer.
- The General Division member's decision errs in fact when it was put into evidence that said directive was unknown or not enforced, particularly regarding the alleged written authorization and the fact that the alleged procedure had been put in place by the employer and tolerated since the Applicant had been hired.
- The General Division member's decision errs in law and in fact and is unreasonable with respect to the evidence presented, namely that the Applicant could not admit that he stole the objects in question when the alleged procedure had been put in place by the employer and tolerated by the person in charge of the service and that the Applicant therefore could not have expected to be dismissed.
- The General Division member's decision is erroneous in law and in fact and is unreasonable because it was conclusively shown that the reason given by the employer was merely a pretext and that the various errors cited above irrevocably tarnish its appreciation of the real cause for dismissal.

[13] Upon review of the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised several questions of fact and of law concerning the notion of misconduct, the answers to which may justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division