



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 232

Tribunal File Number: AD-17-425

BETWEEN:

E. D.

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 Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal of Canada (Tribunal).

INTRODUCTION

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

[3] The Applicant filed an application for leave to appeal to the General Division on May 30, 2017, after learning of 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 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 be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, the answer to which might lead to the setting aside of 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 that:

- The decision by the General Division Member does not meet the requirements under the Act, namely, that she seems to take direct testimonies in support of the appeal to favour the claims of the employer, who was absent during the hearing, and she seems to have refused to file evidence that led to the Applicant's dismissal.

- The decision of the General Division Member does not meet the requirements of the Act, namely, that, in the absence of direct testimony from the employer's representative, of proof that only active union members have been subject to disciplinary measures and of evidence of said employer's behaviour alleged to be contrary to Quebec law pertaining to the respect of right to organize, the conclusions rejecting this component regarding true ground for the Applicant's dismissal are clearly insufficient. In fact, they turn out to be a clear refusal of taking these items into consideration.
- The General Division Member erred in law regarding the quality of the adequate evidence when an employer gives, as a reason, an infraction that in no way falls among the listed grounds.
- The General Division Member erred in law, because she appears to find credibility only in the employer's opinion regarding the events at issue.
- The General Division Member erred in law regarding the conclusion of an appropriation of an asset of the employer while it is possible to question the ownership of said bottles of wine.
- The General Division Member erred in fact, because her analysis of the evidence appears to give the benefit of the doubt to the employer by favouring the items listed by the latter over those listed by the Applicant.
- The General Division Member erred in fact and in law regarding the quality of adequate evidence when an employer gives an infraction as a reason, all the more so when there is evidence of anti-union behaviour on the part of said employer and when the Applicant maintains that the reason given is not the true cause of his dismissal.

- The General Division erred in fact and in law when she gave the union position to support the alleged knowledge of the directive while the Applicant instead denies the scope of the directive stated by the employer.
- The General Division Member erred in fact and in law when it was entered into evidence that said directive was little-known or not applied, especially regarding the alleged written authorization, and when the conduct complained of had been implemented by the employer and tolerated since the hiring of the Applicant.
- The General Division erred in fact, in law, and was unreasonable regarding the evidence submitted, namely, that the Applicant could not admit to having stolen said items while the conduct complained of had been implemented by said employer and tolerated by the person responsible for said service, and that the Applicant could not consequently expect to be dismissed.
- The General Division Member erred in fact, in law and was unreasonable because it has been shown preponderantly that the reason given by the employer constitutes only a pretext and that the various errors listed above irrevocably taint her assessment of the true cause of the 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 law concerning the notion of misconduct, the answers to which might lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division