Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *B. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 259

Tribunal File Number: AD-17-469

BETWEEN:

B. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 6, 2017

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 21, 2017, the Tribunal's General Division determined that the Applicant had lost her employment by reason of her 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 June 26, 2017, after having received the General Division decision on June 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] 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, before leave to appeal 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 claims that the pharmacy's previous owner might be sending an email or a letter to the Tribunal on her behalf. She also submits that most of her "being late" was time owed to her because of overtime performed for the employer's benefit. In support of her application for leave to appeal, she filed a handwritten account of the overtime hours she worked, an account that she did not file before the General Division because it was in a stored box after she had moved.

[10] Unfortunately, an appeal to the Tribunal's Appeal Division is not a *de novo* hearing, where a party can re-present evidence and hope for a new favourable outcome. Furthermore, the evidence was available and could have been discovered by the Applicant prior to the decision of the General Division rendered on April 21, 2017.

[11] In her leave to appeal application, the Applicant has not identified any errors of jurisdiction or law, and she has not identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner.

[12] The General Division found that the Applicant had been fired for misconduct as a result of her tardiness, which the employer had noted on many occasions, and about which she had been warned multiple times.

[13] The undisputed evidence before the General Division shows that the Applicant was given a notice for being late on May 5, 2016, and that her employer had told her that she would be fired if she was late again. In her application for Employment Insurance benefits, she declared that she was late for work in April, May and June (Exhibit GD3-9). In her performance review dated June 9, 2016, her manager notes that "it took a final warning letter (after several verbal warnings) for you to finally show up on time consistently. Any return to lateness will not be tolerated." The Applicant reviewed and signed the performance review on June 9, 2016. On June 10, 2016, the following day, she was late for work again. On June 14, 2016, her employer fired her.

[14] As the General Division has stated, the Federal Court of Appeal noted that absences and tardiness, despite many warnings like those given in the case at hand, constitute misconduct because they are reckless and because they show a lack of concern with respect to the employer—*Parsons v. Canada (Attorney General)*, 2005 FCA 248.

[15] After reviewing the appeal docket and the General Division decision, as well as after considering the Applicant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[16] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division