



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 280

Tribunal File Number: AD-17-413

BETWEEN:

S. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Borderworx Logistics Inc

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 25, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 24, 2017, the Tribunal's General Division determined that the Applicant had lost her employment because 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 May 19, 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] Before leave 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] In this case, the General Division had to decide whether the Applicant had lost her job because of her misconduct.

[10] In her application for leave, the Applicant states that her employment was terminated without proper cause. She argues that the General Division's conclusions were all in the employer's favour. She further argues that the General Division did not consider the employer's failure to offer her compensatory leave following her request to leave for China and its failure to consider her personal situation.

[11] The General Division preferred the consistent, documented evidence of the employer over the contradictory evidence of the Applicant. The employer provided evidence that the Applicant was late on numerous occasions, did not provide any advance notice for her lateness occasioned by doctors' appointments, and that her performance had deteriorated after its refusal to accept her request for lay off to visit a parent in China.

[12] The General Division's role is to determine whether the employee's conduct amounted to misconduct within the meaning of the Act and not whether the severity of the penalty imposed by the employer was justified, or whether the employee's conduct was a valid ground for dismissal – *Canada (A.G.) v. Lemire*, 2010 FCA 314.

[13] As stated by the General Division, the Applicant had an obligation to the employer to arrive to work on time and to provide advance notice of her absences. The Applicant could not have been unaware that the breach of her obligations under her

employment contract was of such scope that it was normally foreseeable that it would be likely to result in her dismissal.

[14] Upon consideration of the appeal docket, the General Division decision, and the submissions of the Applicant in support of her application for leave to appeal, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division