



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 289

Tribunal File Number: AD-17-502

BETWEEN:

B. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 1, 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 June 23, 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* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on July 10, 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 *Department of Employment and Social Development Act* (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 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 gives the appeal a reasonable chance of success.

[9] The Applicant essentially argues that his actions did not constitute misconduct as per section 30 of the Act, because they did not have the requisite element of willfulness and he could not foresee the loss of his employment.

[10] The Tribunal also notes that the General Division, in its decision, gives more weight to the employer's evidence because of the Closed Circuit Television (CCTV) coverage in the building and the police investigation. However, said coverage does not appear to have been filed as evidence; nor was the police investigation report. This could constitute a breach of natural justice.

[11] Upon consideration of the appeal docket and the General Division decision, and after considering the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division