



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. R. v. Canada Employment Insurance Commission*, 2017 SSTADEI 292

Tribunal File Number: AD-17-442

BETWEEN:

P. R.

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

INTRODUCTION

[2] On May 12, 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 is deemed to have requested leave to appeal to the Appeal Division on June 9, 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 to appeal can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[9] In his application for leave to appeal, the Applicant reiterated, in detail, his version of the events that was already submitted to the General Division.

[10] A letter dated June 12, 2017, was sent to the Applicant requesting that he state, in detail, his grounds of appeal pursuant to subsection 58(1) of the DESD Act. The Tribunal received his reply on June 21, 2017. In his reply, it is clear that the Applicant was angry and frustrated by the Tribunal's request. He invited the Tribunal to "read the damn letter," referring to his application for leave to appeal.

[11] The Appellant then called the Tribunal on June 28, 2017, to say that he would mandate an attorney to represent him before the Appeal Division. A second letter dated June 29, 2017, was therefore sent to the Appellant requesting that he state, in detail, his grounds of appeal pursuant to subsection 58(1) of the DESD Act by July 28, 2017, at the latest. The Appellant was advised by this second letter that it was not enough to simply repeat what he had said before the General Division. The Tribunal never got a reply from the Appellant or an attorney.

[12] From his written submissions, there is no doubt that the Applicant wants the Appeal Division to reweigh the evidence already submitted to the General Division for appreciation and consideration. Unfortunately for the Applicant, 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.

[13] Furthermore, the Applicant focused his leave to appeal application on the employer's behaviour. However, the General Division's role was to determine whether his actions amounted to misconduct within the meaning of the Act, and not whether the severity of the penalty that the employer had imposed was justified or whether the employee's conduct was a valid ground for dismissal—*Canada (Attorney General) v. Lemire*, 2010 FCA 314.

[14] The Applicant, although asked on two occasions by the Tribunal to do so, has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has neither identified errors in law nor has he identified any erroneous findings of fact that the General Division, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[15] Upon consideration of the appeal docket and the General Division's decision, as well as after considering the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant did not set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division