



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. Q. v. Canada Employment Insurance Commission*, 2017 SSTADEI 304

Tribunal File Number: AD-17-508

BETWEEN:

D. Q.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 25, 2017

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 June 7, 2017, the General Division of the Tribunal 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 11, 2017. He is deemed to have received communication of the General Division decision on June 17, 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] In regards to the application for leave to appeal, 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 his initial application for leave to appeal, the Applicant argues that he did not lose his employment because of his misconduct, that he did not put himself and company property in danger, and that speeding was only an excuse to dismiss him.

[10] The Tribunal sent a letter to the Applicant on July 18, 2017, requesting that he submit his grounds of appeal by August 17, 2017, and that he explain why his appeal had a reasonable chance of success. The Applicant was told that it was insufficient to simply repeat what he had said before the General Division. The Applicant replied to the Tribunal on August 22, 2017.

[11] In his reply, the Applicant basically reiterates in more detail the facts that he had submitted to the General Division for review and consideration.

[12] Unfortunately, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can re-present evidence and hope for a new or favourable outcome. It is also not for the member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[13] In application for leave to appeal, the Applicant did not identify any errors of jurisdiction or law, or identify any erroneous findings of fact which the General Division may have made in a perverse or capricious manner.

[14] The General Division determined that the Applicant had been dismissed because of his speeding and his reckless driving. The General Division concluded the Applicant ought to have known that after being spoken to about his speeding and hearing the voice recording that he was “driving like a maniac,” that there was a real possibility of being dismissed if any more speeding or reckless driving occurred while driving a company vehicle.

[15] The General Division concluded that the Applicant’s speeding and reckless driving had adversely affected the employer/employee relationship to the point it could not be repaired and that he had lost his employment because of his own misconduct within the meaning of the Act.

[16] After reviewing the appeal docket and the General Division decision, and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[17] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division