



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: 9089-7679 *Québec Inc. v. Canada Employment Insurance Commission*,  
2017 SSTA DEI 315

Tribunal File Number: AD-17-587

BETWEEN:

**9089-7679 Québec Inc.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**A. A.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 5, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On July 20, 2017, the Tribunal's General Division found that the Added Party had not lost her employment by reason of her own misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] On August 23, 2017, the Applicant filed an application for leave to appeal with the Appeal Division after being notified of the General Division's decision on July 25, 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] The Appeal Division must either grant or refuse leave to appeal. Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

### **ANALYSIS**

[7] According to subsection 58(1) of the DESD Act, 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that one of the above-mentioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact, or jurisdiction, the answer to which might lead to the setting aside of the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant argues that the General Division erred in its application of the burden of proof with respect to misconduct within the meaning of the Act. Specifically, it imposed a burden of proof that was too high on the Applicant.

[13] The Applicant claims that, faced with contradictory evidence, the General Division erred in failing to look for corroborating evidence as well as evidence to assess the credibility of the witnesses.

[14] Finally, the Applicant submits that the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it. The Applicant argues that the General Division erred in disregarding the decision by the Court of Quebec, civil division, which sentenced the Added Party to reimburse the stolen amounts. It also disregarded the video evidence, which, according to the Applicant, shows the Added Party's wrongful acts.

[15] After reviewing the appeal docket, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question relating to the General Division's interpretation and application of sections 29 and 30 of the *Act*, the answer to which may lead to the setting aside of the decision under review.

## **CONCLUSION**

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

Pierre Lafontaine

Member, Appeal Division