



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 314

Tribunal File Number: AD-16-1393

BETWEEN:

T. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shirley Netten

Date of Decision: August 31, 2017

REASONS AND DECISION

[1] On December 12, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant's actions, for which his employment was terminated, constituted misconduct. Accordingly, the General Division dismissed the Applicant's appeal of an indefinite disqualification from Employment Insurance benefits under s. 30(1) of the *Employment Insurance Act*.

[2] The Applicant has requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. Pursuant to s. 56(1) of the *Department of Employment and Social Development Act* (DESDA), an appeal to the Appeal Division is not automatic, but rather "may only be brought if leave to appeal is granted." As set out in s. 58(2) of the DESDA, leave to appeal is refused "if the Appeal Division is satisfied that the appeal has no reasonable chance of success." A reasonable chance of success means having some arguable ground upon which the proposed appeal may succeed: *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41. The Applicant does not have to prove the case at the leave stage.

[3] The only grounds of appeal to the Appeal Division are those identified in s. 58(1) of the DESDA:

- 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.

[4] Among other things, the Applicant has raised allegations with respect to the General Division member's conduct at the hearing of his appeal, claiming that the member tended to personal affairs during the hearing and ignored his evidence. In this respect, he has raised a concern that, if substantiated, could possibly establish a failure to observe a principal of natural

justice. The principles of natural justice, which address procedural fairness in decision-making, are drawn from the right to be heard and the right to an impartial decision-maker. Aspects of the right to be heard include a reasonable opportunity to present one's case, and a duty on the part of the decision-maker to consider the relevant evidence.

[5] In light of the Applicant's allegations, I am not satisfied that this appeal has no reasonable chance of success, and thus leave to appeal is granted. I need not consider, at this stage, the strength or merits of the Applicant's claim.

[6] I further note that, pursuant to s. 58(3) of the DESDA, the Appeal Division must either grant or refuse leave to appeal; there is no requirement that individual grounds of appeal be separately considered and accepted or rejected. While I have granted leave to appeal on the basis of a possible breach of natural justice, the Applicant is not restricted in his ability to pursue other grounds of appeal raised in his application.

CONCLUSION

[7] The application for leave to appeal is granted. The Applicant is directed to include, in his written submissions, reference to the timestamps on the recording of the hearing that support his claims regarding the General Division member's conduct.

[8] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shirley Netten
Member, Appeal Division