



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. P. V.*, 2017 SSTADEI 301

Tribunal File Number: AD-17-557

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

P. V.

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

INTRODUCTION

[2] On July 13, 2017, the Tribunal's General Division found that the Respondent 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] The Applicant filed an application for leave to appeal to the Appeal Division on August 2, 2017.

ISSUE

[4] The Tribunal must determine 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] 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 it is satisfied that any of the stated grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be in a position to determine whether there is a question of law, fact or jurisdiction, the answer to which may 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's decision contradicts the teachings of the Federal Court of Appeal on alcoholism and misconduct. It submits that nothing in the file supports the General Division's conclusion that the Respondent's behaviour was involuntary, or that her consumption of alcohol was not conscious or willful. Unlike the General Division's conclusions, the Respondent's actions did constitute misconduct within the meaning of the Act and jurisprudence.

[13] Upon review of the appeal file, the General Division's decision, and the Applicant's arguments in support of its application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raised a question regarding the interpretation and application of sections 29 and 30 of the Act by the General Division whose response might justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division