



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Y. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 317

Tribunal File Number: AD-17-553

BETWEEN:

Y. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 8, 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 12, 2017, the Tribunal's General Division found the following:

- The Applicant had lost his job as a result of his own misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act* (Act).

-The monetary penalty of \$971 levied against the Applicant for having knowingly made a false representation pursuant to Section 38 of the Act was justified.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on August 1, 2017.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] As provided for in 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 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, and lower, hurdle for an applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove his case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above 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 to which the response might lead to the setting aside of the decision under review.

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

[12] The Applicant argues that the General Division erroneously found that he had lost his job due to his own misconduct when in fact he had lost his job for lack of skill after one day of work. He did not have, at the right time, his buddy card to his credit. He argues that the *Benefit Entitlement Digest* specifies the nature of dishonesty, a false statement made at the time of applying for work cannot generally support the conclusion that the loss of

employment was due to misconduct. He argues that, therefore, there is no need to levy a penalty against him.

[13] Upon review of the appeal docket, the General Division's decision and the arguments in support of the application for the leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question pertaining 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

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

Pierre Lafontaine

Member, Appeal Division