



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. F. v. Canada Employment Insurance Commission*, 2017 SSTADEI 318

Tribunal File Number: AD-17-596

BETWEEN:

A. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Health Services Centre

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 8, 2017

Canada

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 28, 2017, the Tribunal's General Division found that the Applicant had lost his employment by reason of his 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 28, 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 DESD Act, the following are the only grounds of appeal:

- 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 application for leave to appeal stage, the applicant does not have to prove his or her case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above 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] 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 employment because of his own misconduct. The General Division concluded from the evidence that he had not violated the existing procedures at his place of employment. He argues that the General Division made a critical error of law by considering his previous statements as misconduct even though the employer itself did not consider those violations a reason for dismissal. The Applicant submits that there is no causal connection between the loss of employment and misconduct.

[13] The Applicant argues that the General Division erred in fact and in law because the reason for dismissal was not demonstrated by the employer and the Respondent.

[14] Upon review of 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 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

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

Pierre Lafontaine
Member, Appeal Division