



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *J. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 383

Tribunal File Number: AD-17-729

BETWEEN:

**J. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 2, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On September 21, 2017, the Tribunal's General Division found that the Applicant had 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 October 23, 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] 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 at least one of the grounds of appeal has a reasonable chance of success.

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

[11] The General Division found that the Applicant had been dismissed for breaching professional ethics by providing too much assistance to students during an exam.

[12] The Applicant submits that the General Division committed an error as she had not lost her employment by reason of her own misconduct within the meaning of sections 29 and 30 of the Act. She states that she did not know that her conduct was such as to impair the performance of duties owed to her employer or that she could be dismissed given that she was teaching in an aboriginal community, in which there was more of an acceptance towards assisting students.

[13] Upon review of the appeal file, the General Division's decision, and the Applicant's arguments in support of and against her application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raised an issue relating to the General Division's interpretation and application of sections 29 and 30 of the Act that may justify setting aside the decision under review.

## **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division