



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 404

Tribunal File Number: AD-17-656

BETWEEN:

**M. T.**

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 20, 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 August 30, 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*.

[3] On October 4, 2017, the Applicant filed an application for leave to appeal with the Appeal Division after he had received the General Division's decision on September 26, 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 DESDA 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 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 above-mentioned 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] In his application for leave to appeal, the Applicant submits that he was dismissed because he exercised a right with the Human and Youth Rights Commission. He discontinued his allegations only after a mediation session with the employer.

[13] The Applicant essentially argues that the General Division erred in giving precedence to the employer's evidence over his direct testimony. He argues that his testimony is supported by reliable documentary evidence.

[14] It is not incumbent upon the Tribunal to reassess the evidence submitted before the General Division. However, the Tribunal finds that the General Division does not appear to have considered the Applicant's position that he had been dismissed by the employer after exercising a right. The Applicant raised the question of the causal link before the General Division.

[15] After reviewing the appeal docket, the General Division's decision and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raises a question, the answer to which may lead to the setting aside of the decision under review.

## **CONCLUSION**

[16] The Tribunal grants leave to appeal.

Pierre Lafontaine

Member, Appeal Division