



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 426

Tribunal File Number: AD-17-621

BETWEEN:

L. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 5, 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 2017, the Tribunal's General Division determined that the Applicant had lost her employment by reason of her own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act*.

[3] The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on September 13, 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] 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 an issue of law, fact or jurisdiction that 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] In support of her request for leave to appeal, the Applicant states that the General Division made significant errors with regard to the facts in her file, and she provides examples to back up her claim.

[13] She also states that she had never signed the disciplinary notice and that the document had obviously been forged by the employer after her departure. She argues that employer mentions photos whereas none are present in the file.

[14] She maintains that it was in fact the employer who had been negligent by failing to find a replacement to fill in for her during her leave despite being given adequate notice. She argues that the General Division erred by finding that she had committed misconduct.

[15] Upon review of the appeal file, 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 the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division