



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 438

Tribunal File Number: AD-17-868

BETWEEN:

**C. G.**

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: December 15, 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 October 12, 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 November 6, 2017, after receiving the General Division's decision dated 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] 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 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 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 justify setting aside the decision under review.

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

[12] In her leave to appeal application, the Applicant submits that she was unable to obtain the medical note required by her employer because of the hospital's policy that the emergency department cannot provide medical notes, and it takes almost two weeks to get a medical note from a specialist.

[13] The Applicant submits that the General Division erred in failing to consider the fact that she had provided several medical documents and that she had contacted the hospital so she

could provide the note requested by her employer, but that it was impossible for the hospital to provide it within the timeframe required by her employer.

[14] The Applicant submits that the hospital has certain protocols and rules to follow and that its inability to provide the medical note within the timeframe required by her employer was out of its control. It was not because her behaviour was wilful. Therefore, she did not lose her employment due to her own misconduct within the meaning of the Act.

[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 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**

[16] The Tribunal grants leave to appeal.

Pierre Lafontaine

Member, Appeal Division