



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. R. v. Canada Employment Insurance Commission*, 2017 SSTADEI 450

Tribunal File Number: AD-17-877

BETWEEN:

G. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 29, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 27, 2017, the Tribunal's General Division determined that the Applicant had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant is presumed to have requested leave to appeal to the Appeal Division on November 15, 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] Subsection 58(1) of the DESD Act states that 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] Before leave to appeal can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[9] The Applicant argues that he was unjustly fired by his employer. He has a family to support and a mortgage to pay. He cannot sell his house and he has no food, heat, or car. He states that he needs help.

[10] On November 24, 2017, the Tribunal sent a letter to the Applicant advising him that what he had stated in his application for leave to appeal did not constitute grounds of appeal. He was therefore asked to explain in detail the reasons why he was appealing the General Division decision. The Applicant replied on November 29, 2017.

[11] In his reply, the Applicant asked the Tribunal, "What is the problem?" He stated that he had to sell his car and that his house was for sale. He reiterated that he had no food, no Christmas tree, and that there would be no presents this season. He insisted on the fact that he and his wife had contributed to the Employment Insurance program for a combined total of 80 years without filing any claims.

[12] The General Division concluded from the undisputed evidence that the Applicant was aware that he was authorized to work only until 3:00 p.m. and that he had worked beyond that time without specific authorization from the employer. It also found from the undisputed evidence that the Applicant had gone to the grocery store after having spoken to

his supervisor, who had inquired into his tardiness, and then requested to be paid an additional hour of overtime.

[13] The General Division found that the Applicant's conduct was willful, deliberate, or conscious to the extent that he knew or ought to have known that going to the grocery store and then requesting to be paid overtime could result in his dismissal, and that it constituted misconduct pursuant to sections 29 and 30 of the Act.

[14] Unfortunately, an appeal to the Tribunal's Appeal Division is not a *de novo* hearing, where a party can re-present evidence and hope for a new, favorable outcome. It is also not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the General Division's decision.

[15] In his leave application, and after specific requests from the Tribunal to do so, the Applicant did not identify any errors of jurisdiction or law, or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner when it determined that he had lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the Act.

[16] After reviewing the appeal docket, the General Division's decision, and the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[17] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division