



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. M. v. Canada Employment Insurance Commission*, 2018 SST 302

Tribunal File Number: AD-18-11

BETWEEN:

K. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Thomas Circle of Care Inc

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 29, 2018

Canada⁺

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] On November 20, 2017, the Tribunal's General Division determined that the Applicant had lost her employment by reason of her own misconduct pursuant to ss. 29 and 30 of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on January 2, 2018, after receiving the General Division decision on December 15, 2017.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] According to ss. 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), "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 DESDA 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 DESDA 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] With regard to the application for leave to appeal, before leave can be granted, the Applicant needs to satisfy the Tribunal 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's main argument is that the General Division ignored the evidence before it, more specifically, the numerous contradictions in the facts presented by the employer. She submits that the employer's documentary evidence alleging misconduct is not dated, not signed, or even dated months after her employment had been terminated. The Applicant submits that the General Division erred by giving any credibility to the employer's evidence.
- [10] The Applicant submits that the General Division erred in law when applying the legal test for misconduct since she could not have known that her conduct was such as to impair the performance of the duties owed to her employer and that, as a result, dismissal was a real possibility.
- [11] The Tribunal, after reviewing the General Division decision, considers that the General Division might have misapplied the burden of proof, which would also constitute an error of law.
- [12] After reviewing the appeal docket and the General Division decision, and considering the Applicant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons that fall into the above-enumerated grounds of appeal, which could lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division