



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *ABC Emballuxe Inc. v. Canada Employment Insurance Commission*, 2018 SST 400

Tribunal File Number: AD-18-99

BETWEEN:

**ABC Emballuxe Inc.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**D. G.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 10, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Claimant, D. G., filed an initial claim for Employment Insurance benefits. The Respondent (Commission) initially informed him that he did not qualify for Employment Insurance benefits because he had lost his job due to his own misconduct.

[3] Following the Claimant's reconsideration request, the Commission informed him that it was modifying its initial decision in his favour. The Commission found that the Claimant did not lose his employment by reason of his own misconduct. The documents in the case did not permit it to establish the facts with certainty, because the versions from ABC Emballuxe Inc. (employer) and the Claimant are equally credible. The Commission gave the Claimant the benefit of the doubt. The employer then requested leave to appeal to the General Division.

[4] The employer is appealing the Commission's decision to the General Division of the Social Security Tribunal.

[5] In its decision, the General Division determined that the Claimant did not lose his employment by reason of his own misconduct. It found that there was insufficient evidence to conclude that the Claimant violated the agreement with his employer by presenting personal bills as justification for his monthly expenses. It found that the evidence was insufficient to conclude that the Appellant created false bills for English courses and requested reimbursement from the employer.

[6] The employer now seeks leave to appeal the General Division decision.

[7] The employer, in support of its application for leave to appeal, argues that the General Division erred in law and that it largely founded its decision on findings of fact

that were erroneous or not put into evidence. Furthermore, the General Division breached its obligation to ask the parties to specify on which elements its decision is based.

[8] The Tribunal must decide if there is an arguable case that the General Division committed a reviewable error that may have a reasonable chance of success on appeal.

[9] The Tribunal grants leave to appeal because at least one of the grounds of appeal may have a reasonable chance of success on appeal.

### **ISSUE**

[10] In its grounds of appeal, has the employer raised a reviewable error committed by the General Division that may have a reasonable chance of success of appeal?

### **ANALYSIS**

[11] Subsection 58(1) of the DESD Act sets out the only grounds of appeal for a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[12] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is an initial hurdle for the employer 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 employer does not have to prove its case, but it must establish that its appeal has a reasonable chance of success. In other words, it must show that there is an arguable case that there is a reviewable error on which the appeal might succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above-mentioned grounds of appeal has a reasonable chance of success.

[14] This means that the Tribunal must, in accordance with s. 58(1) of the DESD Act, be in a position to determine whether there is a question of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

**ISSUE:** In its grounds of appeal, has the employer raised a reviewable error committed by the General Division that may have a reasonable chance of success of appeal?

[15] In its leave for appeal, the employer cites ss. 58(1)*a*) and *b*) of the DESD Act. It argues that the General Division erred in law and based its decision on erroneous findings of fact.

[16] More specifically, the General Division accepted as known facts that were not put into evidence or discussed at the hearing. It argues that the General Division was obligated to ask the parties for further information about the elements on which it would base its decision. The employer argues that this constitutes a denial of natural justice because if it had been informed of the General Division's erroneous presumptions, it would have been able to respond with the appropriate information.

[17] The employer provided a detailed outline of the erroneous or unanalyzed facts that the General Division should have taken into account in its decision. It argues that if the General Division had analyzed the facts correctly, this would have led to a different evaluation of the case.

[18] Upon review of the appeal file, the General Division 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 employer has raised a question of natural justice, law, or fact that might justify setting aside the decision under review.

## **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division