



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. B. v. Canada Employment Insurance Commission*, 2018 SST 413

Tribunal File Number: AD-18-135

BETWEEN:

**D. B.**

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: Shu-Tai Cheng

Date of Decision: April 12, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on January 30, 2018, is refused.

### **OVERVIEW**

[2] The Applicant, D. B., applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission, denied her benefits due to her misconduct.

[3] The Applicant argues that she was entitled to vacation and that the employer misinterpreted provincial law by refusing her request for vacation. As a result, being absent from work for vacation does not represent insubordination or misconduct.

[4] The Applicant appealed the Commission's decision. The General Division found that the Applicant had chosen to miss work in spite of the employer's refusal—an act that violated the employer's code of ethics—and that an agreement reached subsequently with the employer, but without admission of responsibility, changed no part of the situation.

[5] In her application for leave to appeal, the Applicant argues that the employer was not justified in refusing her request for vacation and did not give her a copy of the code of ethics.

[6] The appeal has no reasonable chance of success because the Applicant has not raised any argument that the General Division committed an error.

### **ISSUE**

[7] Is there an arguable case that the General Division erred by finding that the Applicant lost her employment as a result of her own misconduct?

## ANALYSIS

[8] An applicant must be granted leave to appeal a decision rendered by the General Division. An appeal may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.<sup>1</sup>

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the appeal might succeed?<sup>2</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error. The only reviewable errors are the following:<sup>4</sup> the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

### **Is there an arguable case that the General Division erred by finding that the Applicant lost her employment as a result of her own misconduct?**

[11] The Applicant has not raised any arguable ground on which the appeal might succeed.

[12] According to the Applicant, her employer was not justified in refusing her vacation request and, by refusing her request when she had already bought her plane tickets, the employer caused antagonism for which the Applicant was not responsible. Furthermore, the employer did not provide her with a copy of the code of ethics, contrary to the General Division's conclusion.

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<sup>1</sup> *Department of Employment and Social Development Act* (DESDA) at ss. 56(1) and 58(3).

<sup>2</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.

<sup>3</sup> DESDA at s. 58(2).

<sup>4</sup> DESDA at s. 58(1).

[13] Code of ethics: the Applicant confirms that she had read and signed the code of ethics.<sup>5</sup> Furthermore, the General Division did not base its decision on a finding that [translation] “the code of ethics had been submitted”<sup>6</sup> to the Applicant. The General Division found that the Applicant had access to this code of ethics while she was working for the employer and that, during the period between when she bought her plane tickets (December) and her departure (June), she could have consulted it. The appeal has no reasonable chance of success on the basis of this argument.

[14] Refusal of vacation request: the Applicant presented the same arguments at the General Division—that she was entitled to two weeks of vacation; that her request had been refused in an abusive fashion; and that an agreement she reached later with her employer under which she was reinstated shows that the employer violated labour standards—and the General Division considered each of her arguments. It found that [translation] “the employer can decide, depending on the circumstances, if [the vacation] can be granted to the employee or not,” that “the Tribunal’s role is not to determine whether the employer should have granted the vacation to the Claimant or not,” and that the Applicant chose to miss work in spite of the refusal and contrary to the code of ethics.<sup>7</sup> The subsequent agreement contains no admission of any kind, and the Tribunal is not bound by the agreement.<sup>8</sup> It does not change the situation in any way. The General Division did not err in its conclusions.

[15] Although the Applicant is dissatisfied with the findings the General Division made based on the above-mentioned evidence, the General Division did not overlook any important evidence or err in its findings.

[16] Adversarial relationship: the Applicant refers to the terms of s.29c)(x) of the *Employment Insurance Act*, which provides that just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, taking into account “antagonism with a supervisor if the claimant is not primarily responsible for the antagonism.” The Applicant did not

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<sup>5</sup> General Division decision at para. 26.

<sup>6</sup> Leave to appeal application at para. 3.

<sup>7</sup> General Division decision at paras. 32–34.

<sup>8</sup> *Ibid.* at paras. 20–21.

make this argument before the General Division. As a result, there is no evidence on the record to support this argument on appeal to the Appeal Division. The Applicant cannot present new evidence to the Appeal Division, and the intention to present such evidence is not a valid ground of appeal. The Appeal has no reasonable chance of success based on this argument.

[17] In addition to the arguments in the application for leave to appeal, I also examined the evidence on the record. I see no indication that the General Division overlooked or misinterpreted any important evidence. I also find that the General Division did not fail to observe a principle of natural justice, nor did it otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors of law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[18] For these reasons, I find that the appeal has no reasonable chance of success.

**CONCLUSION**

[19] **Leave to appeal is refused.**

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	É. B., for the Applicant
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