



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. D. v. Canada Employment Insurance Commission*, 2018 SST 438

Tribunal File Number: AD-17-943

BETWEEN:

**R. D.**

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: April 23, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, R. D. (Claimant), applied for regular benefits. The employer states that the Claimant was dismissed as a result of his hostile behaviour and disrespectful conduct. The Respondent (Commission) determined that the Claimant was not entitled to regular Employment Insurance benefits because he lost his employment due to his own misconduct. Following the judicial review procedure, the Commission maintained its decision. The Applicant appealed the reconsideration decision to the General Division.

[3] The General Division found, based on the evidence, that the Claimant was dismissed as a result of language used with workmates and his failure to cooperate with the employer's investigation. For the General Division, the Claimant's conduct in the workplace was unacceptable, regardless of whether the Claimant was upset or unhappy with the service he received from the employer's human resources services.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division's decision.

[5] In support of his application for leave to appeal, the Claimant states that he did not like being ridiculed by his employer. He believes that he was provoked and explains the context of what he had said. He emphasizes that the indifference of others hurts and bothers him. He believes that he is not totally responsible for the events that took place in his workplace.

[6] The Tribunal wrote to the Claimant and asked him to explain in detail why he filed an appeal from the General Division decision.

[7] In his reply to the Tribunal, the Claimant essentially repeated the same arguments he made before the General Division and in support of his application for leave to appeal.

[8] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error that might give the appeal a reasonable chance of success.

[9] The Tribunal refuses leave to appeal to the Appeal Division.

## **ISSUE**

[10] In his grounds for appeal, does the Claimant address a reviewable error committed by the General Division that might give the appeal a reasonable chance of success?

## **ANALYSIS**

[11] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the only grounds of appeal for an Appeal Division decision. These reviewable errors are the following: 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] 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 Claimant does not have to prove his case; he must instead prove that his appeal has a reasonable chance of success. In other words, he must establish that there is an arguable case that there is a reviewable error on the basis of which the appeal has a reasonable chance of success.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[14] This means that the Tribunal must, in accordance with s. 58(1) of the DESDA, 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 his grounds for appeal, does the Claimant address a reviewable error committed by the General Division that might give the appeal a reasonable chance of success?**

[15] In his application for leave to appeal and in his reply to the Tribunal, the Claimant essentially repeats his version of the events, which he already submitted to the General Division for consideration. Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a hearing where a party can present his or her evidence again and hope for a favourable decision.

[16] The Tribunal finds that, despite the Tribunal's specific request, the Claimant did not raise any questions of law, fact, or jurisdiction that might justify setting aside the decision under review.

[17] Upon review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no chance but to find that the appeal has no reasonable chance of success.

## **CONCLUSION**

[18] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	R. D., not represented
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