



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v. Canada Employment Insurance Commission*, 2018 SST 558

Tribunal File Number: AD-18-203

BETWEEN:

J. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

X

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 22, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. C. (Claimant), made a claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), denied her claim because she had lost her employment because of her own misconduct. The employer had dismissed the Claimant because she had breached the confidentiality agreement with regard to public records. The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that the Claimant ought to have known that dismissal was a real possibility as a result of her accessing confidential information for her own use, contrary to the employer's policy. The General Division found that the Claimant had lost her employment because of her own misconduct.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. The Claimant submits that contradictory decisions were issued in at least three other instances pertaining to employees who had been working for the same employer, and whose employment ended at the same time and for the same reasons as hers did. She says that the General Division refused to consider this information, even though it was made aware of it, and that by doing so, it failed her and called the entire system into question.

[5] The Tribunal sent the Claimant a letter requesting that she file her grounds of appeal in accordance with s. 58 of the *Department of Employment and Social Development Act (DESDA)*. She was informed that the Tribunal had jurisdiction only over the case before it. The Claimant did not reply to the Tribunal's request within the allowed time.

[6] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error committed by the General Division.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

[9] Subsection 58(1) of the DESDA specifies the only grounds of appeal of 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant 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 her case; rather, she must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before leave can be granted, the Tribunal must 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.

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

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[13] In this case, the General Division had to decide whether the Claimant had lost her employment because of her own misconduct.

[14] In her application for leave to appeal, the Claimant submits that contradictory decisions were issued by the Commission in at least three other instances pertaining to employees who had been working for the same employer, and whose employment ended at the same time and for the same reasons as hers did. She submits that the General Division refused to consider this information, even though it was made aware of it.

[15] The General Division found, based on the evidence before it, that the Claimant ought to have known that dismissal was a real possibility as a result of her accessing confidential information for her own use, contrary to the employer's policy, and that her actions constituted misconduct within the meaning of the *Employment Insurance Act* (Act).

[16] The role of the General Division was to adjudicate the Claimant's case on an individual basis and on its own merit, in order to determine whether there was misconduct under the Act. The General Division did not have jurisdiction over other cases that were not before it.

[17] In her application for leave to appeal, although requested to do so, the Claimant has not identified any reviewable errors, such as an error of jurisdiction, or any failure by the General Division to observe a principle of natural justice. She has not identified any errors in 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, in coming to its decision.

[18] After considering the appeal docket, the General Division decision, and the Claimant's submissions in support of her application for leave to appeal, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. C., self-represented
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