



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. P. c. Canada Employment Insurance Commission*, 2018 SST 509

Tribunal File Number: AD-18-121

BETWEEN:

**C. P.**

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: June 4, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, C. P. (Claimant), worked as a truck driver for the employer. He was terminated because he delivered a load illegally; according to the employer, the Claimant did not have the right to drive because he had reached his maximum number of hours. He is alleged to have demanded \$400 from the employer's client to make the journey illegally. The Respondent (Commission) informed the Claimant that his claim for Employment Insurance benefits was refused because he had lost his employment by reason of his own misconduct. The Claimant requested a reconsideration of the decision, but the Commission maintained its decision. The Claimant appealed to the Tribunal's General Division.

[3] The General Division found that the Claimant had lost his employment by reason of his misconduct. It determined that, although the Claimant's logbook complied with the rules, it did not reflect reality. The General Division found that the Claimant knew or should have known that his conduct could lead to disciplinary action up to and including termination because he did not comply with the rules of conduct for truck drivers and that his logbook did not reflect the load booklet.

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

[5] In support of his application for leave to appeal, the Claimant argued that the General Division erred in law in its interpretation of the notion of misconduct under the *Employment Insurance Act* (EI Act). He did not act contrary to the employer's interests. The Claimant also maintains that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it by misinterpreting the logbook.

[6] The Tribunal must determine whether there is an arguable case that the General Division committed a reviewable error based on which the appeal might have a reasonable chance of success.

[7] The Tribunal grants leave to appeal because the appeal has a reasonable chance of success based on at least one of the grounds of appeal advanced by the Claimant.

## **ISSUE**

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

## **ANALYSIS**

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General 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.

[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 step, the Claimant does not have to prove his case; he must instead establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably some reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that appeal has a reasonable chance of success based on at least one of the grounds of appeal advanced by the Claimant.

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

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

[13] In support of his application for leave to appeal, the Claimant invoked ss. 58(1)(b) and (c) of the DESD Act. The Tribunal finds that the Claimant submitted his application for leave to appeal on time.

[14] The Claimant argues that the General Division erred in law in its interpretation of the notion of misconduct under the EI Act. He did not act contrary to the employer's interests. The Claimant also maintains that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it by misinterpreting the logbook.

[15] On review of the appeal file, the General Division's 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 Applicant has raised an issue of law or fact that may justify setting aside the decision under review.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	Sylvain Bergeron, for the Applicant
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