



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *R. G. v. Canada Employment Insurance Commission*, 2018 SST 811

Tribunal File Number: AD-18-354

BETWEEN:

R. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 15, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. G. (Claimant), made an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed him that he was not entitled to Employment Insurance benefits because he lost his employment due to his own misconduct. The Commission found that the Claimant had deliberately broken and vandalized his employer's equipment. The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant had been dismissed for failing to respect the company's rules, for throwing a packaging stapler when he was angry, and for violating the "last-chance" agreement that he had agreed to comply with. It found that the Claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that as a result, dismissal was a real possibility.

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

[5] In support of his application for leave to appeal, the Claimant argued that the General Division considered only the question of whether misconduct had occurred and not whether misconduct was the cause of the dismissal. As a result, in its analysis, the General Division did not take into account the agreement reached between the employer and the Claimant. This agreement is very important evidence that supports the fact that the employment ended because [translation] "the employee cannot provide regular, constant, and effective service."

[6] 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.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[8] In his grounds of appeal, has the Claimant raised a reviewable error committed by the General Division that may have a reasonable chance of success on appeal?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) 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 his case, but he must establish 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.

[11] 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.

[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 justify setting aside the 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 support of his application for leave to appeal, the Claimant argued that the General Division considered only the question of whether misconduct had occurred and not whether misconduct was the cause of the dismissal. He argues that in its analysis, the General Division did not take into account the interview between the employer and the Claimant. This agreement is very important evidence that supports the fact that the employment ended because [translation] "the employee cannot provide regular, constant, and effective service."

[14] The Tribunal finds it necessary to reaffirm that the mere existence of a concluded settlement agreement between parties is not in and of itself determinative of the issue of whether an employee was dismissed for misconduct.

[15] As the General Division emphasized, it is its role to examine the evidence and to render a decision. It is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has been terminated.

[16] Furthermore, the Tribunal notes that the agreement between the employer and the Claimant includes neither explicit nor implicit admissions that the facts on the Claimant's file were erroneous or did not correctly reflect the events as they occurred. The agreement does not contain any retraction from the employer regarding the events that initially led to the dismissal of the Claimant.

[17] After examining the evidence, the General Division determined that the Claimant was dismissed for failing to respect the company's rules, for throwing a packaging stapler while he was angry, and for violating the "last-chance" agreement that he had agreed to comply with. It found that the Claimant knew or ought to have known that his conduct

was such as to impair the performance of the duties owed to his employer and that as a result, dismissal was a real possibility.

[18] It is well-established in case law that aggressive or violent behaviour at work constitutes misconduct under the *Employment Insurance Act*.

[19] After reviewing 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 no reasonable chance of success. The Applicant has raised no issue that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Claudie Gallant-Bergeron, Appellant's representative
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