



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. B. v. Canada Employment Insurance Commission*, 2018 SST 870

Tribunal File Number: AD-18-508

BETWEEN:

T. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: September 4, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, T. B., applied for Employment Insurance (EI) benefits. She lost her employment but maintains that it was not due to misconduct.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), refused her claim for EI benefits because it found that the Applicant lost her employment as a result of her own misconduct.

[4] An applicant for EI benefits is disqualified from receiving any benefits if they lose their employment because of their own misconduct.

[5] The General Division of the Social Security Tribunal of Canada found that the Applicant's conduct was the direct cause of dismissal and that she lost her employment due to misconduct based on the employer's finding that she had committed theft and fraud.

[6] The Applicant filed an application with the Appeal Division and submitted that the General Division did not properly evaluate her case. She maintains that she was falsely accused.

[7] I find that the appeal does not have a reasonable chance of success because the application simply repeats arguments made before the General Division and does not disclose any reviewable errors.

ISSUE

[8] Is there an argument that the General Division decision is based on serious errors in the findings of fact because the General Division failed to take into account parts of the evidence in the appeal record?

ANALYSIS

[9] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only 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; 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.

[12] The Applicant submits that the General Division erred in its findings included in paragraphs 3, 11, and 12 of its decision. She argues that she conducted herself according to an established practice with her employer.

Issue: Is there an argument that the General Division decision is based on serious errors in the findings of fact because it failed to take into account parts of the evidence in the appeal record?

[13] The General Division did not base its decision on serious errors in the findings of fact.

[14] The General Division took into account the evidence in the appeal record, which included documentary evidence, and the Applicant's testimony at the hearing. However, the General Division was satisfied that the Applicant had lost her employment due to misconduct on her part.

[15] The Applicant argues that there were other reasons for her loss of employment and that she did not act in the manner alleged by the employer. She maintains that she did not

¹ *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).

² *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.

³ DESD Act at s. 58(2).

⁴ DESD Act at s. 58(1).

misappropriate funds. The cheque that she deposited in her personal account was to pay for two computers that she was purchasing for the employer.

[16] The General Division considered the Applicant's arguments and the evidence on file. It considered the Applicant's testimony and each of the reasons she advanced as explanation for the amount of \$2,500 being deposited into her personal account for the purchase of two computers for the employer. Ultimately, the General Division concluded that the Applicant had been terminated "due to her employer's belief that [she] had committed theft and fraud." It also found that the Applicant's actions constituted misconduct.⁵

[17] The Applicant's reasons for appeal do not have a reasonable chance of success. A simple repetition of her arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[18] The specific paragraphs of the General Division decision that are disputed by the Applicant are the following:

- a) Paragraph 3: The Applicant argues that threats were made to her and her family. She asked the General Division for a confidentiality order. The General Division did not grant the order because there was no basis to conclude that public access to the information in the file could cause substantial harm to the Applicant.
- b) Paragraph 11: The employer advised the Commission that the Applicant obtained a cheque for \$2,500 from the employer for the purchase of two computers for the organization and that she deposited it into her personal bank account but that she did not then purchase the computers. The Applicant argues that purchasing items for the employer and being reimbursed was an established practice.
- c) Paragraphs 12: The funds that were put into the Applicant's personal account "were either reimbursements or designated for [the] purchase" of the computers. The Applicant argues that this was an established practice.

⁵ *General Division decision*, at paras. 56 to 63.

[19] With each of these arguments, the Applicant is asking the Appeal Division to reassess the evidence and make findings that differ from the General Division's findings.

[20] The General Division had the benefit of hearing the Applicant's testimony and weighing it along with all the other evidence in the record. It is authorized to assess credibility and assign the weight to be given to evidence. It is not the role of the Appeal Division to rehear or reweigh the evidence.

[21] I have read and considered the General Division decision and the documentary record. My review does not indicate that the General Division either overlooked or misconstrued important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it erred in law in coming to its decision.

[22] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[23] The application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	T. B., self-represented
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