



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. B. v. Canada Employment Insurance Commission*, 2018 SST 886

Tribunal File Number: AD-18-453

BETWEEN:

J. B.

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: September 7, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. B. (Claimant), sent the employer a letter dated January 24, 2017, demanding \$175,000 in exchange for the withdrawal of an ongoing complaint concerning the employer and for the renunciation of future complaints. When the employer received the letter, it terminated her employment for breach of trust. The [Respondent, the] Canada Employment Insurance Commission [(Commission),] agreed to pay the Claimant Employment Insurance benefits. The Commission reconsidered its decision at the employer's request but maintained its initial decision. The employer appealed the reconsideration decision to the General Division.

[3] The General Division found that the letter dated January 24, 2017, was not a negotiation attempt or a settlement offer but an attempt to extort \$175,000 from the employer under the threat of criminal, civil, or disciplinary proceedings and reputational damage. The General Division found that, because the letter appeared to be an extortion attempt, the Claimant knew or should have known that she would be dismissed.

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

[5] In support of her application for leave to appeal, the Claimant stated that she completely disagrees with the General Division's decision. She put forward her version of the facts again and offered additional information and new supporting documents.

[6] On August 7, 2018, the Tribunal asked the [Claimant] to explain in detail why she was requesting leave to appeal. It told her that it was not sufficient to simply repeat the version of the facts she had presented to the General Division.

[7] In response to the Tribunal's request, the [Claimant] alleged that the General Division did not help her during the hearing concerning how to proceed. She needed this help because she is not a legal expert. In support of her application, she also argues that the General Division decision was based on erroneous findings of fact made perversely, capriciously, or without regard for all the material before the General Division. She alleges that the General Division did not produce any explicit written evidence from the X police department relating to a formal accusation of extortion or of any criminal charges brought against her.

[8] 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.

[9] The Tribunal grants leave to appeal because the Claimant has raised at least one ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

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

ANALYSIS

[11] 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 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.

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

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

[14] This means that the Tribunal must be in a position to determine, in accordance with s. 58(1) of the DESD Act, 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 made by the General Division?

[15] First, it is important to remember that an appeal to the Tribunal is not an appeal in which there is a new hearing, that is, where a party can present their evidence again and hope for a favourable decision. The Appeal Division's role is limited by s. 58(1) of the DESD Act.

[16] As a result, the Tribunal cannot consider material that was not presented to the General Division when deciding on this application for leave to appeal.

[17] Second, the Tribunal wishes to stress that the absence of a criminal conviction does not prevent the General Division from finding, based on the evidence, that misconduct has occurred within the meaning of the *Employment Insurance Act* (EI Act).

[18] That said, the [Claimant] has raised an issue regarding the General Division's interpretation of misconduct within the meaning of the EI Act. In support of her application, she also argues that the General Division's decision is based on erroneous findings of fact made perversely, capriciously, or without regard for all the material before the General Division. Finally, the [Claimant] submits that the General Division committed a number of breaches of the principles of natural justice during the hearing.

[19] After reviewing 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 Claimant has raised at least one issue that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. B., Representative for the Applicant
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