



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v. Canada Employment Insurance Commission and X*, 2018 SST 989

Tribunal File Number: AD-18-648

BETWEEN:

A. K.

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: October 15, 2018

Canada⁺

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. K. (Claimant), made an initial claim for employment insurance benefits. The Respondent, the Canada Insurance Commission of Canada (Commission), determined that the Claimant had lost his job because of his misconduct. The Commission found that the Claimant was dismissed because of violence at work. The Claimant requested that the Commission reconsider its decision. However, it maintained its initial decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[3] The General Division found that the Claimant's actions that directly led to his dismissal were conscious and deliberate and that the Applicant should have known that a physical altercation may lead to the loss of his employment. The General Division concluded that the Applicant lost his employment because of his misconduct.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. He puts forward that, contrary to the finding of the General Division, he was not charged with assault. He submits that he is innocent until proven guilty by a criminal court judge. He states that the *Canadian Human Rights Act* protects individuals from discrimination.

[5] The Tribunal must decide whether there is arguably some reviewable error made by the General Division upon which the appeal might succeed.

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

ISSUE

[7] Has the Claimant raised a reviewable error made by the General Division upon which the appeal might arguably succeed?

ANALYSIS

[8] 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; 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 had made in a perverse or capricious manner or without regard for the material before it.

[9] 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 at the hearing of the appeal on the merits. At the application for leave to appeal stage, the Claimant does not have to prove his case, but he must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, he must show that there is arguably some reviewable error upon which the appeal may succeed.

[10] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[11] 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 lead to setting aside the General Division decision under review.

Issue: Has the Claimant raised a reviewable error made by the General Division upon which the appeal might arguably succeed?

[12] In his application for leave to appeal, the Claimant submits that, contrary to the finding of the General Division, he was not charged with assault. He argues that he is

innocent until proven guilty by a criminal court judge. He states that the *Canadian Human Rights Act* protects individuals from discrimination.

[13] The General Division had to decide if the Claimant had lost his employment by reason of his own misconduct, according to ss. 29 and 30 of the *Employment Insurance Act* (EI Act).

[14] It is up to the General Division to assess the evidence before it and decide on the issue of misconduct under the EI Act.

[15] The General Division gave more weight to the statements and testimony of the employer over those of the Applicant. The employer stated that the Applicant had head-butted and punched a co-worker during a meeting in front of his manager. The co-worker had a cut on his nose from this.

[16] The General Division concluded that the Applicant had been fired for perpetrating a physical altercation and was charged by the police for this after the victim made a complaint.

[17] The Applicant argues that the General Division erred when it considered that he had been charged with assault. However, the evidence before the General Division shows that the Applicant, by his own admission, was in fact charged with assault.¹

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

[19] In his application for leave to appeal, the Claimant has not identified any reviewable errors, such as acting beyond or refusing to exercise its jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law or any erroneous findings of fact that the General Division might have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

¹ GD3-22

[20] After reviewing the appeal file and the decision of the General Division and after considering the arguments of the Claimant in support of his application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success because of the reasons outlined above.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented
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