



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. D. v. Canada Employment Insurance Commission*, 2018-SST 1250

Tribunal File Number: AD-18-669

BETWEEN:

J. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 27, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. D. (Claimant), made an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed her that she was not entitled to Employment Insurance benefits because she had lost her employment because of her own misconduct. The Commission found that the Claimant's employer dismissed her because she had gotten angry with a co-worker and been verbally aggressive towards her. The Claimant requested a reconsideration of that decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal.

[3] The General Division found that the Claimant had lost her employment because of the actions of which the employer accused her, namely getting angry with a co-worker in front of patrons of the centre. It found that the Claimant had committed a wilful and deliberate act of such scale that she knew or should have known that it could result in her dismissal.

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

[5] In support of her application for leave to appeal, the Claimant submits that she would like to be reheard. She argues that the General Division did not consider the photos that she presented for the file and that the dates of the photos can be found on her mobile phone.

[6] On October 19, 2018, the Tribunal sent a letter to the Claimant asking her for a detailed explanation as to why she was applying for leave to appeal, under section 58(1) of the [*Department of Employment and Social Development Act* (JDESD Act)]. The Claimant did not respond to the Tribunal's request.

[7] The Tribunal must determine whether it is arguable that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[8] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal on which the appeal might succeed.

ISSUE

[9] In her grounds of appeal, has the Claimant identified a reviewable error that the General Division may have made and that might give the appeal a reasonable chance of success?

ANALYSIS

[10] Section 58(1) of the DESD Act establishes 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.

[11] An application for leave to appeal is a preliminary step towards 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, she must establish that there is arguably a reviewable error based on which the appeal has a reasonable chance of success.

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that the Claimant has raised has a reasonable chance of success.

[13] This means that the Tribunal must be in a position to determine, in accordance with section 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: In her grounds of appeal, has the Claimant identified a reviewable error that the General Division may have made and that might give the appeal a reasonable chance of success?

[14] In support of her application for leave to appeal, the Claimant submits that she would like to be reheard. She argues that the General Division did not consider the photos that she presented for the file and that the dates of the photos can be found on her mobile phone.

[15] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[16] The General Division found from the preponderant evidence that the Claimant had been dismissed for failing to respect the employer's code of ethics because she argued loudly with a co-worker and lost her temper in front of patrons of the centre. It found that the Claimant knew or should have known that her conduct was such that it would impair the performance of the duties owed to her employer and that as a result, dismissal was a real possibility.

[17] The General Division assigns little weight to the photos that the Claimant presented as proof because they show only a person sitting on a sofa using her mobile phone.

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

[19] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issues of law, fact, or jurisdiction that might lead to the setting aside of the decision under review.

[20] On review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. D., self-represented
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