



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. G. v Canada Employment Insurance Commission*, 2018 SST 1301

Tribunal File Number: AD-18-763

BETWEEN:

L. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 20, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, L. G. (Claimant), worked as a personal care attendant for the employer. The employer dismissed the Claimant because she allegedly made a resident fall. As a result, the Employment Insurance Commission refused to pay the Claimant Employment Insurance benefits because she had been dismissed due to her misconduct. The Claimant requested a reconsideration of that decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that the Claimant had lost her employment because of the actions alleged by the employer, namely because she pulled a cart to take it back, causing a resident to fall. It found that the Claimant knew or should have known that her behaviour could lead to her dismissal. The General Division found that the Claimant had lost her employment because of her misconduct.

[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 repeats her version of events, which she has already presented to the General Division.

[6] The Tribunal sent the Applicant a letter dated December 10, 2018, asking her to explain in detail why she was requesting leave to appeal in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] In her response to the Tribunal, the Applicant repeated that she would never make anyone fall or hurt themselves on purpose. In essence, she submits that it was an isolated incident and that the employer made her the scapegoat. She argues that she is a good person and that she would never hurt another person, especially not an elderly person, on purpose.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might succeed.

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

ISSUE

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

ANALYSIS

[11] Section 58(1) of the 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.

[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, she must establish that there is arguably a reviewable error based on which the appeal has a reasonable chance of success.

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

[14] 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 lead to the setting aside of the decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[15] The Claimant, who did not attend the General Division hearing, essentially wants to present her version of events again to the Appeal Division.

[16] 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.

[17] The General Division found, based on the balance of probabilities, that the Claimant had been dismissed for failing to follow the employer's code of ethics because she suddenly pulled on the cart deliberately to take it back from the resident, causing the resident to fall to the ground. The General Division determined that the Claimant knew that this behaviour was subject to disciplinary measures that could include dismissal. The General Division therefore found that the Claimant committed misconduct within the meaning of the *Employment Insurance Act* (EI Act).

[18] The Tribunal notes that, despite the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[19] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	L. G., self-represented
-----------------	-------------------------