



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. R. v Canada Employment Insurance Commission*, 2019 SST 25

Tribunal File Number: AD-18-819

BETWEEN:

D. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 15, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. R. (Claimant), made an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had lost his job by reason of his own misconduct. The Commission found that the Claimant was dismissed for falling asleep while conducting safety-sensitive work. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision. The Claimant appealed the Commission's decision to the General Division of the Tribunal.

[3] The General Division found that the Claimant knew or ought to have known that his dismissal was a real possibility when he was found asleep at work. He was aware of the employer's policy against sleeping on the job and had been warned on several previous occasions that this conduct was unacceptable and that it could lead to his dismissal.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. He states that he knows now what he did wrong. He states that he forgot that he had work two days of the last pay, so he would like to be started after his last two pay days.

[5] The Tribunal sent the Claimant a letter asking that he explain in detail his grounds of appeal. The Claimant replied by reiterating that he forgot that he had work two days of the last pay, so he would like to be started after his last two pay days.

[6] The Tribunal must decide whether there is arguably some reviewable error of the General Division on which the appeal might succeed.

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

ISSUE

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

ANALYSIS

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

[10] 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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error on which the appeal might succeed.

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

[12] 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 General Division 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?

[13] The Claimant seeks leave to appeal the General Division's decision to the Appeal Division. He states that he knows now what he did wrong. He states that he forgot that he had work two days of the last pay, so he would like to be started after his last two pay days.

[14] A letter was sent to the Claimant asking that he explain in detail his grounds of appeal. The Claimant replied by reiterating that he made a mistake when he forgot that he had work two days of the last pay, so he would like to be started after his last two pay days.

[15] The Tribunal noticed that the grounds of appeal stated by the Claimant are unrelated to the issue of misconduct. However, in his application and in his reply to the Tribunal's request for his detailed grounds of appeal, the Claimant specifically mentions that he is appealing decision GE-18-2575 rendered by the General Division.

[16] In that file, the General Division had to decide whether the Claimant had lost his employment by reason of his own misconduct in accordance with sections 29 and 30 of the *Employment Insurance Act*.

[17] The General Division found that the Claimant knew or should have known that his dismissal was a real possibility when he was found asleep at work. He was aware of the employer's policy against sleeping on the job, and he had been warned on several previous occasions that this conduct was unacceptable and that it could lead to his dismissal.

[18] In his application for leave to appeal, the Claimant has not identified any reviewable errors, such as errors of jurisdiction, or any failure by the General Division to observe a principle of natural justice. He has neither identified errors in law nor identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision on the issue of misconduct.

[19] For the above-mentioned reasons and after reviewing the docket of appeal and the General Division decision and considering the Claimant's arguments in support of his request for leave to appeal, the Tribunal finds 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:	D. R., self-represented
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