



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. C. v Canada Employment Insurance Commission*, 2019 SST 162

Tribunal File Number: AD-18-724

BETWEEN:

E. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: February 25, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on October 16, 2018, is refused.

OVERVIEW

[2] The Applicant, E. C., applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission, denied him benefits because he had lost his employment due to his misconduct.

[3] The Applicant submits that someone hacked his telephone/computer, had access to his photos and emails, and sent inappropriate emails. He maintains that he is therefore not responsible for the situation.

[4] The Applicant appealed the Commission's decision. The General Division summoned the Applicant to a teleconference hearing, but he did not participate. The General Division found that the Applicant had committed the acts alleged by the employer, that is to say, sending degrading and harassing emails to a number of people, and that these acts constitute misconduct within the meaning of the legislation.

[5] The Applicant submits in his application for leave to appeal that he did not send the Tribunal all of the pages of documentation in his possession and that the pagination of the documentation presented to the Tribunal is not constantly increasing.

[6] The appeal does not have a reasonable chance of success because the Applicant has not raised an argument that the General Division may have made an error.

ISSUE

[7] Is there an arguable case that the General Division made an error when it found that the Applicant lost his employment because of his misconduct?

ANALYSIS

[8] An applicant must seek leave to appeal a decision rendered by the General Division. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave is granted.¹

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the Applicant might succeed?²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error. The only reviewable errors are the following:⁴ 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 made in a perverse or capricious manner or without regard for the material before it.

Is there an arguable case that the General Division made an error when it found that the Applicant lost his employment because of his misconduct?

[11] In the Applicant's view, the General Division did not have access to all the documentation it needed to make its decision. He acknowledges that he did not participate in the hearing on October 3, 2018. As a result, he submits that the General Division based its findings [translation] "on an erroneous document."

[12] However, the presentation of new evidence is not a ground of appeal allowed at the Appeal Division. Furthermore, the Applicant is responsible for providing all relevant documentation before or at the hearing before the General Division. He also had the opportunity

¹ *Department of Employment and Social Development Act* (DESDA) at ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

³ DESDA, at s 58(2).

⁴ DESDA, at s 58(1).

to explain his documentation at the hearing, but he did not participate and did not explain his absence.

[13] In its decision, the General Division noted that the Applicant had submitted voluminous documentation that was not relevant to the determination of the issues, and the General Division retained only the relevant evidence in the file.⁵ The Applicant claims to be the victim of a campaign against him, that his computer was hacked, and that the employer's computer system is inadequate, but the documents provided do not show this.⁶ Furthermore, the General Division found that the Applicant had committed the acts of which he is accused⁷ and that those acts constitute misconduct within the meaning of the *Employment Insurance Act*.⁸

[14] The General Division did not make an error in making its findings. It did not make its findings in a perverse or capricious manner or without regard for the material before it.

[15] I have also reviewed the evidence on file. There is no evidence that the General Division overlooked or misinterpreted important evidence. I also find that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors of law or 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.

[16] For these reasons, I find that the appeal does not have a reasonable chance of success.

⁵ General Division decision at paras 22–25.

⁶ *Ibid.* at paras 21–31.

⁷ *Ibid.*

⁸ *Ibid.* at paras 32–37.

CONCLUSION

[17] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	E. C., self-represented
-----------------	-------------------------