



Citation: *X. v Canada Employment Insurance Commission and M. V.*, 2019 SST 178

Tribunal File Number: AD-19-158

BETWEEN:

**X.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**M. V.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 11, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Added Party, M. V. (Claimant), left his employment as a cleaner because he was burnt out from working too many hours and was not being compensated for his overtime. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had just cause to voluntarily leave his employment, and it allowed his claim. The Applicant, X. (Employer), requested a reconsideration of the Commission's decision, but the Commission maintained its decision. The Employer appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant had just cause to voluntarily leave his employment because he was not paid his overtime and that he should not be disqualified from receiving Employment Insurance benefits in accordance with section 30(1) of the *Employment Insurance Act* (EI Act).

[4] The Employer now seeks leave to appeal the General Division's decision to the Appeal Division. It would essentially like to present its case again with additional information that had not been provided to the General Division.

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

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

### ISSUE

[7] Has the Employer identified a reviewable error that the General Division may have committed that may give the appeal a reasonable chance of success?

## ANALYSIS

[8] 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.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Employer 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 Employer does not have to prove its case; instead, it must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, it must show that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before it can grant leave, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the grounds of appeal listed above 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 section 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

**Issue: Has the Employer identified a reviewable error that the General Division may have committed that may give the appeal a reasonable chance of success?**

[12] The General Division had to decide whether the Claimant had left his employment without just cause in accordance with sections 29 and 30 of the EI Act. The Claimant and the Employer were both present at the General Division hearing.

[13] In its application for leave to appeal, the Employer would essentially like to present its case with additional information that had not been provided to the General Division.

[14] The General Division found that the Claimant was working excessive overtime hours during his employment and that the Employer refused to compensate the Claimant properly for this overtime work. It found that the Claimant's position was supported by the statements of both parties and by the Labour Board decision awarding the Claimant payment for unpaid overtime during the last six months of his employment.

[15] The General Division found that the Employer's statements presented significant inconsistencies that undermined the reliability of its evidence. The General Division preferred the Claimant's statements, which remained consistent throughout the interviews with the Commission and his oral testimony at the hearing.

[16] The General Division concluded that the Claimant had just cause to voluntarily leave his employment and that he should not be disqualified from receiving Employment Insurance benefits in accordance with section 30(1) of the EI Act.

[17] It is well established case law that an appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can represent its evidence and hope for a new, favourable outcome.

[18] In its application for leave to appeal, the Employer has not identified any reviewable errors, such as issues of jurisdiction or any failure by the General Division to observe a principle of natural justice. It has not identified any errors in 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 in coming to its decision.

[19] For the reasons described above and after reviewing the appeal docket and the General Division decision and considering the Employer's arguments in support of its 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:	Ella Fenyvesi, for the Applicant/Employer
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