



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Y. A. v Canada Employment Insurance Commission*, 2019 SST 336

Tribunal File Number: AD-18-754

BETWEEN:

Y. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: April 5, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, Y. A. (Claimant), was ill and he advised his employer he would not be coming to work. His employer requested that he provide a doctor's note to justify his absence. Being unable to see a doctor and fearing he would lose his job, the Claimant had a friend provide a false doctor's note for him, which he submitted to his employer. The Claimant was dismissed from his employment and the Respondent, the Canada Employment Insurance Commission (Commission), disqualified him from receiving Employment Insurance benefits as he had lost his employment due to his misconduct. The Claimant requested a reconsideration of this decision and the Commission maintained its position.

[3] The General Division found that the Claimant had breached his employer's trust when he provided it with a falsified doctor's note and that he knew that this conduct could lead to his dismissal. It concluded that the indefinite disqualification under section 30 of the *Employment Insurance Act* (EI Act) was justified.

[4] The Claimant was granted leave to appeal to the Appeal Division. The Claimant puts forward that there has been miscommunication regarding his appeal. He argues that the misconduct issue was only put forward to explain and to further prove that when he processed his claim, he had no reason to withhold any information from the Commission. What he is appealing is the mistake of the Commission who wrongfully approved his claim.

[5] The Tribunal must decide whether the General Division erred in law in its interpretation of the legal test for misconduct.

[6] The Tribunal dismisses the appeal.

ANALYSIS

Appeal Division's mandate

[7] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that DESD Act.¹

[8] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.²

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

Issue: Did the General Division erred in law in its interpretation of the legal test for misconduct?

[10] The General Division had to decide if the Claimant had lost his employment because of his misconduct in accordance with ss. 29 and 30 of the EI Act.

[11] The General Division found that the Claimant had breached his employer's trust when he provided it with a falsified doctor's note and that he knew that this conduct could lead to his dismissal. It concluded that the indefinite disqualification under section 30 of the EI Act was justified.

[12] The undisputed evidence demonstrates that the employer requested a medical note from the Claimant because he had expired all of his sick days. The Claimant, unable to attend a clinic, panicked and feared for his job. He called someone that works in a

¹ *Canada (A.G.) v. Jean*, 2015 FCA 242; *Maunder v. Canada (A.G.)*, 2015 FCA 274 (CanLII).

² *Idem*.

hospital and she wrote him a note. He later gave that note to his employer.³ The employer noticed that the note had spelling errors and was not presented in a normal format. The employer confronted the Claimant who admitted that the medical note was falsified. The Claimant later apologized.

[13] In the present case, there was sufficient evidence available to the General Division to justify a finding of misconduct. The Claimant admitted that the doctor's note was falsified and that he acted in fear of losing his job. In acting as he did, the Claimant knew or ought to have known that the conduct was such as to impair the performance of his duties owed to the employer and that, as a result, dismissal was a real possibility.

[14] For the above-mentioned reasons, the appeal is dismissed.

[15] However, in his application for leave to appeal, the Claimant argues that there has been miscommunication from the beginning regarding his appeal. He submits that the misconduct issue was only put forward to explain and to further prove that when he processed his claim, he had no reason to withhold any information from the Commission. What he is appealing is the mistake of the Commission who wrongfully approved his claim although it was aware of all the facts of his case.

[16] The Claimant confirmed during the appeal hearing that he is arguing that the Commission did not render a decision on the real issue, more precisely, whether the Commission could review his application for benefits under section 52 of the EI Act. The Tribunal notes that the Commission did not render a decision on that issue. Therefore, it could not be appealed to the General Division.

[17] The Tribunal recommends, in the interest of justice, that the Commission render a decision on the issue raised by the Claimant so that he can exercise his rights of appeal, if necessary.

CONCLUSION

³ GD3-18, GD3-19, GD3-31, GD3-32.

[18] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	March 28, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Y. A., Appellant