



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *X v Canada Employment Insurance Commission and R. B.*, 2019 SST 349

Tribunal File Number: AD-19-237

BETWEEN:

**X**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**R. B.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 8, 2019

**Canada**<sup>ca</sup>

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Respondent, R. B. (Claimant), applied for benefits and established a benefit period. He stated that he voluntarily left this employment due to a personal conflict with the owner of the company. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had voluntarily left his employment with just cause as he had no other reasonable alternatives then quitting his job when he did. Following the employer's (Applicant) request for reconsideration, the Commission rescinded its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] On March 13, 2019, a letter was sent to the employer advising that the Claimant had filed an appeal to the General Division and offering the possibility to be an added party. On March 20, 2019, the employer requested to be added as a party.

[4] On March 28, 2019, the General Division refused the employer's request to be added as a party. The General Division concluded that the employer had not provided any reasons to explain how it had a direct interest in the decision.

[5] The employer now seeks leave to appeal of the General Division's decision to refuse its request to be an added party to the proceedings.

[6] The Tribunal must decide whether the employer raised some reviewable error of the General Division upon which the appeal might succeed.

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

## **ISSUE**

[8] Does the employer raise some reviewable error of the General Division upon which the appeal might succeed?

## **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; 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 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 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 her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before leave can be granted, the Tribunal needs to 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 subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

**Issue: Does the employer raise some reviewable error of the General Division upon which the appeal might succeed?**

[13] The employer seeks leave to appeal of the General Division's decision to refuse its request to be an added party to the proceedings. In support of its application for leave to appeal, the employer puts forward that it has evidence in support of the Claimant's voluntary leave without cause. It would like to assist the General Division in making the correct decision regarding the Claimant.

[14] On March 13, 2019, a letter was sent to the employer advising that the Claimant had filed an appeal to the General Division and offering the possibility to be an added party. The letter clearly indicates that if a person wants to be added as a party to the proceedings, a request must be filed and received by the General Division and that it must contain a statement that sets out why the person has a direct interest in the decision.

[15] On March 20, 2019, the employer requested to be added as a party but did not provide any reasons to explain how it had a direct interest in the decision.

[16] On March 28, 2019, The General Division refused the employer's request to be added as a party since it had not provided any reasons to explain how it had a direct interest in the decision.

[17] The employer, in its application for leave to appeal, would essentially like to represent its request to be an added party. Unfortunately, for the employer, an appeal to the Appeal Division is not a new opportunity to represent a request to be an added party.

[18] In its application for leave to appeal, the employer has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. It has not identified errors in law nor identified any erroneous findings of fact, which 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 to refuse the employer's request to be an added party.

[19] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the employer 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:	Kelly Crumb, representative of the Applicant
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