



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. G. v Canada Employment Insurance Commission*, 2019 SST 548

Tribunal File Number: AD-19-314

BETWEEN:

S. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 5, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. G. (Claimant), made an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed him that he was not entitled to Employment Insurance benefits because he had lost his employment due to his misconduct. The Commission determined that the Claimant had behaved inappropriately and disrespectfully on the job. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant had been dismissed because of inappropriate behaviour toward one of the employer's clients. It determined that the Claimant was obligated to behave appropriately when he was at one of the employer's clients and that he had been directed to change his inappropriate behaviour many times before. The General Division found that the Claimant had to know that that conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.

[4] The Claimant now seeks leave to appeal the General Division decision.

[5] In support of his application for leave to appeal, the Claimant argues that he was not vulgar and that the General Division disregarded the agreement reached with his employer confirming his position that his dismissal was unfair.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

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

ANALYSIS

[9] Section 58(1) of the 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 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 of the case. 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; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal 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 could lead to the setting aside of the decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] In support of his application for leave to appeal, the Claimant argues that he was not vulgar and that the General Division disregarded the agreement he reached with his employer confirming his position that his dismissal was unfair.

[14] The Tribunal finds it necessary to reaffirm that the mere existence of a concluded settlement agreement between parties is not in and of itself determinative of the issue of whether an employee was dismissed for misconduct.

[15] It is for the General Division to assess the evidence and come to a decision. It is not bound by how the employer and employee or a third party might characterize the grounds on which an employment has been terminated.

[16] As the General Division noted, the agreement between the employer and the Claimant includes neither explicit nor implicit admissions that the facts in the Claimant's file were erroneous or did not correctly reflect the events as they occurred. The agreement does not contain any retraction from the employer regarding the events that initially led to the Claimant's dismissal.

[17] The General Division determined that the Claimant had been dismissed because of inappropriate behaviour at one of the employer's clients. It determined that the Claimant was obligated to behave appropriately when he was at one of his employer's clients and that he had been directed to change his inappropriate behaviour numerous times before. The General Division found that the Claimant had to know that that behaviour was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.

[18] It is well established in case law that inappropriate and disrespectful behaviour at work constitutes misconduct under the *Employment Insurance Act*.

[19] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no

reasonable chance of success. The Applicant has not raised an issue that could lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. G., self-represented
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