



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. D. v Canada Employment Insurance Commission*, 2019 SST 583

Tribunal File Number: AD-19-329

BETWEEN:

**M. D.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 14, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, M. D. (Claimant), made an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), informed her that she was not entitled to Employment Insurance benefits because she had lost her employment due to her misconduct. The Commission determined that the employer dismissed the Claimant because she stole food from the employer. 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 lost her employment because of the actions alleged by the employer, namely taking food without paying. It found that the Claimant had committed a wilful and deliberate act of such scope that she knew or should have known that it could result in her dismissal.

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

[5] In support of her application for leave to appeal, the Claimant asks for a reconsideration of her file. She restates the facts that she submitted to the General Division with more details.

[6] The Tribunal sent the Applicant a letter dated May 10, 2019, asking her to explain in detail why she was requesting leave to appeal in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] In her response to the Tribunal, the Applicant accused the employer of not investigating at the workplace before accusing her of theft. She stressed that other

employees take food. She argued that the food was going to be thrown out instead of distributed to community organizations. The Claimant argued that, if she had known that she would lose her employment, the food would have been thrown in the garbage. She thinks that she was constructively dismissed.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that may form the basis of a successful appeal.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal might succeed.

### **ISSUE**

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

### **ANALYSIS**

[11] 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.

[12] 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

[14] 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 may 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?**

[15] In support of her application for leave to appeal, the Claimant accused the employer of not investigating at her workplace before accusing her of theft. She stressed that other employees take food. She argued that the food was going to be thrown out instead of being distributed to community organizations. The Claimant argues that, if she had known that she would lose her employment, the food would have been thrown out. She thinks that she has been constructively dismissed.

[16] The General Division found, based on the balance of probabilities, that the Claimant was dismissed because she left her work numerous times without paying for all the meals she was taking. It did not give credibility to the Claimant's assertion that all the employees were acting in a similar manner. The General Division found that leaving with the employer's food was an act of such severity that the Claimant must have known that she would be dismissed.

[17] The General Division assigned little weight to the Claimant's testimony because she evaded certain questions and because her testimony was implausible and contradictory.

[18] Unfortunately for the Claimant, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[19] It is well established in case law that theft committed by an employee at the employer's expense constitutes misconduct under the *Employment Insurance Act*.

[20] The Tribunal notes that, despite the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	M. D., self-represented
-----------------	-------------------------