



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. L. v Canada Employment Insurance Commission*, 2019 SST 670

Tribunal File Number: AD-19-475

BETWEEN:

S. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 25, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. L. (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 been dismissed by his employer because he had committed offences under the Québec *Highway Safety Code* (HSC), which meant that the employer could no longer assign him a truck because of the risk that he represented. 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 his employment because of acts the employer alleges he committed—that is committing offences under the HSC, which meant that he could no longer drive a truck. It found that the Claimant committed a wilful and deliberate act of such scope that he knew or should have known that dismissal was a real possibility.

[4] The Claimant now seeks leave to appeal the General Division decision. He argues that he had the impression that the presiding General Division member was biased. He maintains that he did not commit misconduct.

[5] The Tribunal sent the Claimant a letter on July 9, 2019, asking him to explain in detail why he was requesting leave to appeal in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[6] In his response to the Tribunal, the Applicant indicated that there was no misconduct and that the General Division misunderstood his explanations. He repeated that the presiding member was biased.

[7] 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.

[8] 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.

ISSUES

[9] Issue 1: Was the application for leave to appeal filed within the time permitted?

[10] Issue 2: 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the 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 may 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 has 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 could lead to the setting aside of the decision under review.

Issue 1: Was the application for leave to appeal filed within the time permitted?

[15] No. The General Division decision was sent to the Claimant on May 16, 2019. The Claimant filed his application for leave to appeal on July 8, 2019. However, the Claimant requested a form from the Appeal Division within the time permitted.

[16] In light of the circumstances in this case, the Tribunal finds that it is in the interest of justice to grant the Claimant an extension of time to apply for leave to appeal. The delay is not excessive, and the extension of time would not prejudice the Commission.¹

Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[17] In support of his application for leave to appeal, the Claimant submits that he had the impression that the presiding General Division member was biased. He submits that she misunderstood his explanations and that there was no misconduct on his part.

[18] Given the Claimant's grounds of appeal, the Tribunal listened to the recording of the General Division hearing.

[19] The Tribunal notes that that General Division exercised its role as judge of the facts in questioning the Claimant and confronting him with the employer's version of events. The Claimant had the opportunity to present his version of events and address the Commission's position. There was no breach of natural justice.

[20] The General Division determined that the Claimant had lost his employment because of acts the employer alleges he committed—that is committing offences under

¹ *X (Re)*, 2014 FCA 249; *Grewal v Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

the HSC, which meant that he could no longer drive a truck. It found that the Claimant committed a wilful and deliberate act of such scope that he knew or should have known that dismissal was a real possibility. It found that the Claimant lost his employment because of his misconduct.

[21] The Tribunal is of the view that the General Division did not err when it found from the material before it that the Claimant's poor driving record amounted to a breach of a duty in the Claimant's employment contract. Since the Claimant could not drive a truck for his employer due to his own negligence, he breached an essential condition of his employment.

[22] As the General Division noted, the fact that the Claimant failed to ensure that he had at all times the number of points needed to drive his truck reflects a recklessness and blatant negligence that approaches wilfulness under the EI Act.

[23] 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.

[24] 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.

[25] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. L., self-represented
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