



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. M. v Canada Employment Insurance Commission*, 2019 SST 838

Tribunal File Number: AD-19-594

BETWEEN:

**S. M.**

Applicant

and

**Canada Employment Insurance Commission**

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: September 5, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, S. M. (Claimant), made an initial claim for employment insurance benefits. The Respondent, the Canada Insurance Commission of Canada (Commission) determined that the Claimant had lost his job because of his own misconduct. The Commission found that the Claimant was dismissed because he used profane language, called his employer names, and threatened the employer. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[3] The General Division found that the Claimant admitted leaving a profane message for his employer. It also found that the profane use of language and name-calling in the message the Claimant left for his employer was enough in and of itself to constitute misconduct. Moreover, the General Division determined that the Claimant either knew or should have known that leaving an expletive-filled message for his employer would lead to his dismissal. It concluded that the Claimant lost his employment because of his own misconduct.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He puts forward that he did not properly read the notice of hearing and waited for a phone call from the General Division to attend the hearing. He would like an opportunity to present his case.

[5] The Tribunal must decide whether arguably, there is some reviewable error of the General Division upon which the appeal might succeed.

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

## ISSUE

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

## ANALYSIS

[8] 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.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. 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 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.

[10] 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.

[11] 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 Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?**

[12] The Claimant, in his application for leave to appeal, submits that he did not properly read the notice of hearing and waited for a phone call from the General Division to attend the hearing.

[13] On August 6, 2019, the General Division proceeded in the absence of the Claimant since it was satisfied that he had received the notice of hearing in accordance with section 12 of the *Social Security Tribunal Regulations*.

[14] The Tribunal finds that the notice of hearing before the General Division was sent by courier to the Claimant on July 22, 2019. The Claimant admits having received the notice of hearing.

[15] The notice of hearing indicates that the Claimant must dial in to the teleconference using the numbers and information provided. It also clearly indicates that the General Division will not call him.

[16] The Tribunal cannot conclude that a breach of natural justice occurred since the Claimant was aware of the hearing date before the General Division. He was also properly informed of the procedure to follow to attend the hearing.

[17] The General Division had to decide if the Claimant had lost his employment because of his own misconduct in accordance with ss. 29 and 30 of the *Employment Insurance Act* (EI Act).

[18] The Claimant admitted on several occasions that he used profane language with his employer since he was upset about not being paid a legal holiday.

[19] It is well established in case law that aggressive or violent behaviour at work constitutes misconduct under the EI Act.

[20] The Claimant, in his leave to appeal application, would essentially like to represent his case, after not being present at the hearing before the General Division.

[21] Unfortunately, for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[22] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He 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.

[23] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

#### **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVES:	S. M., Self-represented
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