



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. G. v Canada Employment Insurance Commission*, 2019 SST 1351

Tribunal File Number: AD-19-688

BETWEEN:

**L. G.**

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: November 22, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, L. G. (Claimant), was dismissed from his job. The Respondent, the Canada Insurance Commission of Canada (Commission) determined that the Claimant had lost his job by reason of his own misconduct. The Commission found that the Claimant was dismissed because he was absent from work without informing his supervisor. 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's conduct in failing to report his absences from work to his supervisor was willful, or so negligent as to approach willful; and, having been warned about the need to conform with the company policy regarding reporting of his absences, he knew or ought to have known that by continuing to not comply, his dismissal was a real possibility. The General Division concluded that the Commission had proven the Claimant's misconduct.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He puts forward that he disagrees with the General Division decision and that the Commission has failed to prove his misconduct. He submits that he was not given the opportunity to attend the General Division hearing since nobody verified his availability before scheduling the date.

[5] A letter was sent to the Claimant asking that he explain in detail his grounds of appeal on the issue of misconduct. The Claimant did not reply to the Tribunal.

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

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

## **ISSUE**

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably 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 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.

[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.

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

[13] The Claimant, in his application for leave to appeal, puts forward that he disagrees with the General Division decision. He submits that the Commission has failed to prove his misconduct. The Claimant also puts forward that he was not given the opportunity to attend the General Division hearing since nobody verified his availability.

[14] On September 25, 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*.

[15] The Tribunal notes that the Claimant authorized the General Division to correspond with him by e-mail. The General Division sent the notice of hearing, including the date, time and teleconference information, to the Claimant by e-mail on September 10, 2019. It also left him a voice message confirming the date and time of the hearing on September 18, 2019.

[16] The record does not show that the Claimant contacted the General Division, before the scheduled hearing date or before the General Division decision, to advise of his non-availability for the scheduled date. He could have requested a new hearing date but he chose not to do so. Therefore, the Tribunal cannot conclude that the General Division failed to respect a principle of natural justice.

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

[18] The General Division found that the Claimant's conduct in failing to report his absences from work to his supervisor was willful, or so negligent as to approach willful; and, having been warned about the need to conform with the company policy regarding reporting of his absences, he knew or ought to have known that by continuing to not comply, his dismissal was a real possibility. The General Division concluded that the Commission had proven the Claimant's misconduct.

[19] It is well established in the jurisprudence that being absent from work without properly notifying the employer, or giving them a valid reason for the absence, indicates wilful or wanton disregard for the employer's interests and of the standards of behaviour that the employer has a right to expect of their employees.

[20] The Applicant, 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

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| REPRESENTATIVE: | L. G., Self-represented |
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