



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. P. v Canada Employment Insurance Commission*, 2019 SST 1410

Tribunal File Number: AD-19-855

BETWEEN:

**A. P.**

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: Valerie Hazlett Parker

Date of Decision: December 16, 2019

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] A. P. (Claimant) worked at a government call centre. The employer terminated his work contract. The Claimant applied for regular Employment Insurance benefits. The Canada Employment Insurance Commission refused the application because it decided that the Claimant was dismissed because of his misconduct.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Commission had failed to prove that the Claimant was dismissed for misconduct by misusing Crown tools (email) and releasing confidential information, but that it had proven misconduct by deliberately using government internet for personal purposes, and that he underperformed in his call management responsibilities. It also decided that the employer had not harassed the Claimant.

[4] The Claimant's application for leave (permission) to appeal this decision is refused because the appeal does not have a reasonable chance of success on the basis that the General Division based its decision on any important factual error.

### GROUND OF APPEAL

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or

d) based its decision on an important factual error.<sup>1</sup>

[6] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. The DESD Act says that leave to appeal must be refused if the appeal does not have a reasonable chance of success. Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that falls under the DESD Act and on which the appeal has a reasonable chance of success.

## **ISSUE**

[7] Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error?

## **ANALYSIS**

[8] One ground of appeal that I can consider is whether the General Division based its decision on an important factual error. To succeed on this basis the Claimant must prove three things:

- a) that a finding of fact was erroneous (in error);
- b) that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) that the decision was based on this finding of fact.<sup>2</sup>

[9] The Claimant says that the performance appraisal emails filed with the Tribunal show that his global report scores were above the group average.<sup>3</sup> The Claimant says that the General Division based its decision on an erroneous finding of fact that his performance was not satisfactory.

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<sup>1</sup> This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

<sup>2</sup> *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

<sup>3</sup> The Claimant also provided additional documents to support this, AD1B

[10] However, the General Division considered all of the evidence regarding the Claimant's performance appraisals.<sup>4</sup> The decision states that the Claimant received high scores on certain aspects of his work performance, such as his attendance. However, he had continued poor performance in call management.<sup>5</sup> The decision refers to the Claimant not actively listening, being condescending, disrespectful and impatient, making insufficient efforts to help and laughing at a caller's situation during the call.<sup>6</sup> The decision also states that the evidence reveals that the Claimant was unreceptive to the employer's feedback on his performance and suggestions for improvement.<sup>7</sup>

[11] Based on all of the evidence, the General Division concluded that the Employer had proven that the Claimant was dismissed for misconduct in this regard. There was an evidentiary basis for this finding of fact. It was not erroneous. Therefore, the appeal does not have a reasonable chance of success on this basis.

[12] The decision also concludes that the Claimant was dismissed for misconduct on the basis of using work time for personal matters, including surfing the internet.<sup>8</sup> The Claimant does not say that any error was made regarding this. Therefore, even if the General Division made an error regarding his call performance, it still correctly decided that the Claimant was dismissed for misconduct.

[13] I have read the General Division decision and reviewed the documents filed with the Tribunal. The General Division did not overlook or misconstrue any important information.

[14] There is no suggestion that the General Division made an error in law or failed to provide a fair process.

## **CONCLUSION**

[15] Leave to appeal is therefore refused.

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<sup>4</sup> General Division decision at paras. 31-36

<sup>5</sup> *Ibid.* at para. 36

<sup>6</sup> *Ibid.* at para. 33

<sup>7</sup> *Ibid.* at para. 34

<sup>8</sup> *Ibid.* at paras. 20-28

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVES:	A. P., Self-represented
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