



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. G. v Canada Employment Insurance Commission*, 2020 SST 404

Tribunal File Number: AD-20-605

BETWEEN:

R. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 8, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. G. (Claimant), applied to renew her benefit period. 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 Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant was absent from work on several occasions and that she lost her employment because of her absenteeism. It determined that the Claimant could have expected to be dismissed because the employer had given her a second chance. The General Division found that the Claimant lost her employment because of her misconduct.

[4] The Claimant is now asking the Tribunal for leave to appeal the General Division decision. She reintroduced several medical documents produced before the General Division. The Claimant argues that the General Division made its decision without considering the whole situation.

[5] On April 20, 2020, the Tribunal asked the Claimant to provide detailed grounds for her appeal of the General Division decision. The Tribunal received no response from the Claimant.

[6] The Tribunal must decide whether it can be argued that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because none of the grounds of appeal the Claimant has raised give the appeal a reasonable chance of success.

ISSUE

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

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 the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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.

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

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal raised by the Claimant has a reasonable chance of success.

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

[12] The Claimant is asking for leave to appeal the General Division decision. She reintroduced several medical documents produced before the General Division. The Claimant argues that the General Division made its decision without considering the whole situation.

[13] The General Division determined that the Claimant was absent from work on several occasions and that she lost her employment because of her absenteeism. It determined that the Claimant could have expected to be dismissed because the employer had given her a second chance. The General Division found that the Claimant lost her employment because of her misconduct.

[14] The Claimant did not dispute the fact that she had been absent from work on several occasions before the General Division. She admitted that the reasons provided to her employer to justify her absences were lies. She explained that she had lied to the employer because she had not had the courage to tell it that her absences were justified for mental health reasons.

[15] The General Division considered the Claimant's medical evidence. It found that it was insufficient and did not allow it to conclude that she was unaware of her actions. Moreover, the General Division gave little weight to the Claimant's testimony. It found that, from the time she filed her application to renew her benefits to the time of the hearing, the Claimant's statements and testimony were full of inconsistencies, contradictions, and half-truths.

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

[17] It is well established in case law that being absent from work without notifying the employer or giving it valid reasons for the absence from work constitutes misconduct.

[18] After reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of her application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised an issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. G., self-represented
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