



[TRANSLATION]

Citation: *PB v Canada Employment Insurance Commission*, 2021 SST 783

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
November 11, 2021 (GE-20-702)

Tribunal member: Pierre Lafontaine

Decision date: December 23, 2021

File number: AD-21-440

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) was a delivery person for a restaurant. His employment ended because he could not drive a vehicle anymore due to his driver's licence getting revoked. When he applied for benefits, he said he had stopped working because of a shortage of work.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's claim because his employment had ended because of his own misconduct. On reconsideration, the Commission upheld the initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant had lost his job because he did not have a valid driver's licence anymore and because a driver's licence was an essential condition to work as a delivery person. It found that the Claimant could expect to be let go and that this is what had caused him to lose his job. The General Division decided that the Claimant's act was misconduct under the law.

[5] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision. He argues that the General Division made an important error of fact.

[6] I have to 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.

[7] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has 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* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[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 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, that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal 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] In support of his application for leave to appeal, the Claimant argues that the General Division made an important error of fact. He says that his employer never offered him another position. He argues that he could have worked with a breathalyzer

but that his employer never followed up on their discussion. The Claimant says that his Employment Insurance claim is largely based on the insurable hours from his regular job and that he should be entitled to benefits.

[13] The General Division found that the Claimant had lost his job because he did not have a valid driver's licence anymore and because a driver's licence was an essential condition to work as a delivery person. It found that the Claimant could expect to be let go and that this is what had caused him to lose his job. The General Division decided that the Claimant's act was misconduct under the law.

[14] The employer confirmed that the Claimant's driver's licence had been revoked and that a driver's licence was an essential condition for his work as a delivery person.

[15] It is well established that an employee who is required to have a valid driver's licence as an essential, concrete condition of their work and loses it as a result of their wrongful act breaches an express condition of the employment contract.¹

[16] In addition, it does not matter whether the employer or the employee took the initiative in severing the employment relationship when the employment is terminated by necessity and when the alleged act is the real cause of this termination.²

[17] The Claimant says that the General Division made an error by failing to take into account his regular job, which he still has. He says that it is true that he lost his part-time job as a delivery person after losing his driver's licence, but that his Employment Insurance claim is largely based on the hours of insurable employment accumulated in his regular job. So, he should be entitled to benefits.

[18] Unfortunately for the Claimant, the law makes clear that, when you lose your job because of misconduct or voluntarily leave your job without just cause, the hours of

¹ *Canada (Attorney General) v Cooper*, 2003 FCA 389; *Canada (Attorney General) v Cartier*, 2001 FCA 274.

² *Canada (Attorney General) v Borden*, 2004 FCA 176.

insurable employment accumulated in **any** employment before the date you lost your job are excluded from the computation in relation to qualification for benefits.³

[19] I find that the General Division decision is based on the evidence that was presented and on the applicable legislative provisions, as interpreted in the case law.

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any question of fact or law that could justify setting aside the decision under review.

Conclusion

[21] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

³ See section 30(5), read together with section 30(1) of the *Employment Insurance Act*, in force at the time of the loss of employment and application for benefits. See also *Canada (Attorney General) v Trochimchuk*, 2011 FCA 268.