Citation: ***F. W. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1109**

Date: September 18, 2015

File number: AD-15-940

APPEAL DIVISION

Between:

F. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On July 31, 2015, the General Division of the Tribunal determined that:

- The Applicant lost his employment by reason of his own misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (the "*Act*").

[3] The Applicant requested leave to appeal to the Appeal Division on August 31, 2015.

ISSUE

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the "*DESD Act")*, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal".

[6] Subsection 58(2) of the *DESD Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal 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.

[8] 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, before leave can be granted.

[9] The Applicant, in his application for leave, repeats his version of the events that led to his dismissal. The Applicant also states that the General Division seems to have believed the Employer instead of him although the Employer was not present at the hearing. He submits that the General Division did not give any weight to the eyewitness account. Finally, he argues that a Court issued Recognizance Order is not a sufficient basis for a finding on a balance of probabilities that he committed misconduct.

[10] The Applicant, in his application for permission to appeal, is essentially asking this Appeal Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[11] Furthermore, the case relied upon by the attorney of the Applicant before the General Division (CUB 80268) regarding the Court Recognizance Order was, as noted by the General Division in its decision, overturned by the Federal Court of Appeal (*Canada v. Ahmat Djalabi,* 2013 FCA 213) which considered that such an order is not without probative value.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant has not set

out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[13] The Application is refused.

Pierre Lafontaine
Member, Appeal Division