

Citation: *B. B. v. Minister of Employment and Social Development*, 2015 SSTAD 886

Date: July 16, 2015

File number: AD-15-262

APPEAL DIVISION

Between:

B. B.

Applicant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)**

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] On February 12, 2015, the General Division of the Social Security Tribunal of Canada refused to grant an extension of time to file an appeal to the General Division. It concluded that although the Applicant had an arguable case on appeal, he did not have a continuing intention to appeal. The Applicant sought leave to appeal from this decision. He argued that he had a continuing intention to appeal, and instructed his representative to file an appeal within the time permitted to do so. The representative did not do so, and was terminated from his employment as a claimant representative as a result of this conduct. In contrast, the Respondent argued that the Applicant should not be granted leave to appeal as he had not provided sufficient evidence that he had a continuing intention to appeal.

ANALYSIS

[2] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[3] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that may be considered to grant leave to appeal a decision of the General Division (see the Appendix to this decision).

[4] After considering the arguments presented by both parties, I am satisfied that the Applicant may have been denied a full hearing due to the conduct of his representative. The Applicant presented a letter which instructed his representative to pursue his claim. The representative appears to not have followed instructions from the Appellant to do this. This may have denied the Applicant an opportunity to fully present his case to the Tribunal. This is a ground of appeal that may have a reasonable chance of success on appeal.

[5] Accordingly, leave to appeal is granted.

[6] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

- (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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.