

Citation: *K. N. v. Canada Employment Insurance Commission*, 2014 SSTAD 390

Appeal No. AD-13-92

BETWEEN:

K. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: December 22, 2014

DECISION

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

INTRODUCTION

[2] On April 29, 2013, a panel of the board of referees determined that:

- the imposition of a disentitlement pursuant to sections 9 and 11 of the *Employment Insurance Act* (the “*Act*”) and section 30 of the *Employment Insurance Regulations* (the “*Regulations*”) was justified for failing to prove unemployment;
- the imposition of a non-monetary warning penalty was justified pursuant to section 38 of the *Act* for making a misrepresentation by knowingly providing false or misleading information.

[3] The Applicant requested leave to appeal to the Appeal Division on May 29, 2013.

ISSUES

[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] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal 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 argues that the board of referees has erred in law in making its decision. The board he argues did not correctly apply the law to determine his self-employment status under section 30 of the *Regulations*. The board did not investigate and make a visible and clear conclusion that the operation of the business was in minor extent. The board of referees has also concluded and based its decision on an erroneous finding of fact that it made. The board relied on assumptions without connecting them to any facts at all.

[10] After reviewing the docket of appeal, the decision of the board of referees and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[11] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division