

[TRANSLATION]

Citation: *F. J. v. Canada Employment Insurance Commission*, 2015 SSTAD 8

Appeal No. AD-13-125

BETWEEN:

F. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Application for Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 6, 2015

DECISION

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

INTRODUCTION

[2] On March 7, 2013, a Board of Referees found that:

- Disentitling the Applicant under sections 9 and 11 of the *Employment Insurance Act* (the Act) and section 30 of the *Employment Insurance Regulations* (the Regulations) was justified because the Applicant did not prove that he was unemployed.

[3] On May 2, 2013, the Applicant filed an application for leave to appeal with the Appeal Division.

ISSUE

[4] The Tribunal must decide whether 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*, “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 *Department of Employment and Social Development 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] In accordance with section 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (a) the Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the Board of Referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the Board of Referees based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove his or her case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that even one of the above-mentioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[11] Given the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant essentially alleges that the Board of Referees did not take into account the case law that he submitted and did not explain in its decision why this case law is not applicable to the facts in his case. He also disputes the findings of the Board of Referees regarding the six (6) criteria in subsection 30(3) of the Regulations, which he argues were not supported by the evidence.

[13] Finally, he maintains that the Board of Referees arbitrarily dismissed the evidence of his involvement in the business to a minor extent and the evidence of his job search during his benefit period.

[14] After reviewing the appeal docket, the Board of Referees' decision and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised a number of questions of fact and law whose response might justify setting aside the decision under review.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division