

[TRANSLATION]

Citation: *A. V. v. Canada Employment Insurance Commission*, 2015 SSTAD 38

Appeal No. AD-13-703

BETWEEN:

**A. V.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Extension of Time and Application for Leave to**  
**Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 9, 2015

## **DECISION**

[1] The Tribunal grants the extension of time to file the application for leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On June 26, 2013, a Board of Referees found that:

- The Applicant's earnings were allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the Regulations);
- The disentitlement imposed under paragraph 18(a) of the *Employment Insurance Act* (the Act) was justified because the Applicant failed to show that he was available for work;
- The Applicant voluntarily left his employment without just cause under sections 29 and 30 of the Act;
- Issuing a warning was justified under subsection 41.1(1) of the Act.

[3] On August 16, 2013, the Applicant filed an application for leave to appeal with the Appeal Division.

## **ISSUE**

[4] The Tribunal must decide whether to grant the extension of time to file the application for leave to appeal and 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 subsection 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] The Applicant stated that when he received the Board of Referees’ decision, he contacted his MP the next week for assistance, and his MP referred him to a representative on August 13, 2013. The application for leave to appeal was submitted on August 16, 2013. The Tribunal finds that, under the circumstances, the interest of justice favours granting the extension of time to file the Applicant’s application for leave to appeal – *X (Re)*, 2014 FCA 249; *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower 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 the case.

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

[11] 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.

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

[13] In his application for leave to appeal, the Applicant argued that the Board of Referees failed to take into account the material before it and erred in its interpretation of the concept of reasonable assurance of another employment.

[14] After reading the Board of Referees' decision, the Tribunal finds that the Board of Referees does not seem to have explained the reasons behind its decision and does not seem to have applied the appropriate legal tests in this case.

[15] 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. There are a number of questions of fact and law whose response might justify setting aside the decision under review.

## **CONCLUSION**

[16] The Tribunal grants the extension of time to file the application for leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division