

Citation: *N. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 30

Appeal No: AD-13-503

BETWEEN:

N. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Late application and Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 8, 2015

DECISION

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

INTRODUCTION

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

- The Applicant had 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 May 17, 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] The Applicant states that when he received the decision of the board of referees, the attached documents stated that he had 60 days to appeal and not 30 days. For this reason, the Tribunal finds that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] 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.

[10] The Applicant argues that the board of referees essentially overlooked the fact that the employer was not applying its policy regarding being late at work. He submits in support of that position that he in fact worked after being late without any recrimination from his employer and that the final warning was not then applied. He therefore argues that the board of referees failed to conclude from the evidence before it that he was not fired because of his misconduct. Finally, the Applicant alleges that the board of referees did not respect principles of natural justice.

[11] The Tribunal also noticed upon reading the decision of the board of referees that the appropriate legal test for misconduct might not have been applied and interpreted correctly by the board of referees.

[12] 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

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

Pierre Lafontaine

Member, Appeal Division