

Citation: *P. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 43

Appeal No: AD-13-390

BETWEEN:

P. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: January 12, 2015

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (the “Tribunal”) for leave to appeal the decision of the Board of Referees (the “Board”) issued on April 24, 2013. The Board denied her appeal on the allocation of earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations*.

[2] The Applicant filed an application for leave to appeal (the “Application”) using the old “Notice of Appeal to the Umpire” Form with a Service Canada office on May 15, 2013. She attached a copy of a March 22, 2013 adjournment decision to the Application and not the Board’s decision on the merits of April 24, 2013. She was advised that Service Canada does not have the authority to accept the appeal and the application was returned to her with information on how to appeal to the Tribunal. The Application was received by the Tribunal on June 7, 2013.

[3] The Application was filed with the Tribunal outside of the current 30-day time limit. It was filed within the old 60-day time limit which existed at the time of the adjournment decision.

ISSUES

[4] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[5] In order to succeed on the Application, the Applicant must show that the appeal has a reasonable chance of success.

THE LAW

[6] According to subsections 56(1) and 58(3) of the *Department of Human Resources and Skills Development (DHRSD) 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”.

[7] Subsection 58(2) of the DHRSD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

SUBMISSION

[8] The Applicant submitted in support of the Application that: “I disagree with the decision from the Board of Referees and that is why I am going to the Board of Umpire.”

ANALYSIS

[9] The Applicant was advised by the Tribunal that the Application was missing information and that it appeared to be late. In letters of February 27 and April 29, 2014, the Applicant was asked to provide further information and to submit a request for an extension of time. The Applicant did not submit anything in response to these letters.

[10] Given that this Application was made attaching the adjournment decision of March 22, 2013, the Applicant may have relied on the 60-day limit which existed at that time. The Application was filed outside of the 30-day limit but within 60 days. In any event, no prejudice to the Respondent results if an extension of time is granted, since the Application is refused for the reasons that follow.

[11] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (i) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (ii) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (iii) 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.

[12] For our purposes, the decision of the Board is considered to be a decision of the General Division.

[13] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[14] While the Applicant ticked the box corresponding to “the board of referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction” as the grounds of appeal, the only comment or explanation given was that she disagreed with the Board decision.

[15] There is no explanation by the Applicant on how the Board failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. In addition, the Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Board may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[16] The Applicant was asked to supply more information to complete her Application but did not do so. I have read and carefully considered the Board’s decision and the record, and there is nothing which would support an allegation of a breach of natural justice or that the Board failed to exercise its jurisdiction.

[17] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard, and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

CONCLUSION

[18] The Application is refused.

Shu-Tai Cheng

Member, Appeal Division