

Citation: *W. F. v. Canada Employment Insurance Commission*, 2015 SSTAD 37

Appeal No: AD-13-697

BETWEEN:

**W. F.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 9, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On March 7, 2013, a panel of the board of referees determined that:

- The Applicant lost her employment by reason of her 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 10, 2013.

## **ISSUES**

[4] The Tribunal must decide if it will allow the late application and 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 late application for permission to appeal, the Applicant states that the documents attached to the decision of the board of referees indicated she had 60 days to appeal the decision of the board of referees and not 30 days. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file her application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. 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 erred in determining that her communications with her legal counsel in respect of employment related issues constituted disclosure to a third party of confidential information in contravention of employer's policy and constituted misconduct under sections 29 and 30 of the *Act*. The Applicant further argues that the board of referees misapplied the legal test for misconduct when they found that she willfully disregarded the effects that her actions would have on her position.

[11] After reviewing the docket of appeal, the decision of the board of referees and considering the arguments of the Applicant in support of her 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**

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

*Pierre Lafontaine*

Member, Appeal Division