

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. P. G.*, 2015 SSTAD 63

Appeal No. AD-13-1161

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**P. G.**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 15, 2015

## **DECISION**

[1] The Social Security Tribunal (the Tribunal) grants leave to appeal before its Appeal Division.

## **INTRODUCTION**

[2] On April 15, 2013, a Board of Referees concluded the following:

- The Respondent had accumulated a sufficient number of hours of insurable employment to have an Employment Insurance benefit period established under section 7.1 of the *Employment Insurance Act* (the Act).

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

## **ISSUE**

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

## **THE LAW**

[5] As stated in 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* states 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 as follows:

- (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;

(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 application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle that the Applicant must meet, and is lower than the one that must be faced at the hearing of the appeal on the merits. At the leave to appeal stage, the Applicant does not have to prove its case.

[9] Leave to appeal will be granted by the Tribunal if the Applicant shows that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] To do this, the Tribunal must be able to determine, under subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law or of fact or of jurisdiction whose response might justify setting aside the decision under review.

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

[12] In its application for leave to appeal, the Applicant submitted that the Board of Referees exceeded its jurisdiction and erred in law when it allowed the Respondent's appeal despite the fact that the Respondent did not have the number of hours of insurable employment required pursuant to subsection 7(2) and section 8 of the Act. The Applicant argued that the Federal Court of Appeal has stated that neither the Board of Referees nor the Umpire can modify the requirements set out in section 7 of the Act.

[13] It also submitted that the Board erred when it determined that the delay between the offence committed by the Respondent and the notice of violation issued by the Applicant was much too long, and that, as a result, it was justified in not taking into account the said notice in the calculation of the number of insurable hours pursuant to the Act.

[14] After reviewing the appeal file, the Board of Referees' decision and the arguments in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised several questions of jurisdiction, of fact and

of law concerning the Board of Referees' interpretation and application of section 7 of the Act whose responses might justify setting aside the decision under review.

## **CONCLUSION**

[15] The Tribunal grants leave to appeal before its Appeal Division.

*Pierre Lafontaine*

Member, Appeal Division