

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. D. G.*, 2015 SSTAD 64

Appeal No. AD-13-1162

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

D. G.

Respondent

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

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 June 4, 2013, a Board of Referees concluded the following:

- The disentitlement imposed pursuant to sections 9 and 11 of the *Employment Insurance Act* (the Act) and section 30 of the *Employment Insurance Regulations* (the Regulations) was unfounded because the Respondent proved he was unemployed.

[3] On June 25, 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 erred in fact and in law when it concluded that the Respondent was unemployed pursuant to section 30 of the Regulations. It argued that the Board of Referees erred when it concluded that the facts in the file and the Respondent's credible testimony revealed that he was invested as a simple shareholder in the business.

[13] The Applicant also submitted that, given all the evidence that shows that the Respondent was not simply a shareholder, the Board's decision was unreasonable.

[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 fact and of law

concerning the Board of Referees' interpretation and application of section 30 of the Regulations whose response might justify setting aside the decision under review.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division