

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. G. P.*, 2015 SSTAD 68

Appeal No. AD-13-1175

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

G. P.

Respondent

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

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 16, 2015

DECISION

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

INTRODUCTION

[2] On April 25, 2013, a Board of Referees concluded the following:

- The Respondent had not voluntarily left her employment without just cause pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act).
- The Respondent had accumulated a sufficient number of hours of insurable employment pursuant to section 7 of the Act.

[3] On May 15, 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 Application submitted that the Board of Referees erred in law in its decision by failing to apply the appropriate test to the voluntary leaving, pursuant to section 29 of the Act.

[13] The Applicant also argued that the Board of Referees based its decision on an erroneous finding of fact when it concluded that the Respondent's voluntary leaving was the only reasonable alternative in her case.

[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 sections 29 and 30 of the Act whose response might justify setting aside the decision under review.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division