

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. D. R.*, 2015 SSTAD 69

Appeal No. AD-13-1177

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

D. R.

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 Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On May 14, 2013, a Board of Referees found that:

- The Respondent did not voluntarily leave his employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (the Act).

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

ISSUE

[4] The Tribunal must decide whether 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*, “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* provides 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 that:

(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; or

(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] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that one of the above-mentioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

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

[12] In its application for leave to appeal, the Applicant argued that the Board of Referees misinterpreted subsection 30(1) of the Act and erred in applying the legal test for just cause.

[13] The Applicant also argued that the Board rendered a decision that was erroneous in fact and law because the evidence in the file confirms that the Respondent left his employment to avoid compromising his studies. It argued that the evidence shows that the Respondent allegedly continued to work for his employer despite the significant changes in his duties and in the organization of his work since he was hired.

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