

[TRANSLATION]

Citation: *F. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 97

Appeal No. AD-13-82

BETWEEN:

F. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Extension of Time and Application for Leave to
Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: January 27, 2015

DECISION

[1] The Tribunal grants the extension of time to file the application for leave to appeal, but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On May 29, 2013, a Board of Referees found that:

- Imposing a penalty was justified under section 38 of the *Employment Insurance Act* (the Act).

[3] On July 16, 2013, the Applicant filed an application for leave to appeal with the Appeal Division.

ISSUE

[4] The Tribunal must decide whether to grant the extension of time to file the application for leave to appeal and 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] The Tribunal finds that, under the circumstances, the interest of justice favours granting the extension of time to file the Applicant's application for leave to appeal.

[9] 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.

[10] 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.

[11] 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.

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

[13] The Tribunal asked the Applicant to submit his grounds of appeal by correspondence dated December 29, 2014. The Tribunal did not receive any response from the Applicant.

[14] In his application for leave to appeal, the Applicant merely repeated essentially what had already been submitted to the Board of Referees. It is not for the Member, who must determine whether the appeal should proceed, to clarify the grounds of appeal or to assess or reweigh the evidence put before the Board of Referees.

[15] Since the Applicant did not indicate any of the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

CONCLUSION

[16] The Tribunal grants the extension of time to file the application for leave to appeal, but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division