

[TRANSLATION]

Citation: *I. A. v. Canada Employment Insurance Commission*, 2015 SSTAD 115

Appeal No. AD-13-709

BETWEEN:

**I. A.**

Applicant

and

**Canada Employment Insurance Commission**

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: February 3, 2015

## **DECISION**

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On March 20, 2013, a Board of Referees found that:

- The earnings (vacation pay) had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (“the *Regulations*”).

[3] On April 22, 2013, the Applicant filed an application for leave to appeal to the Appeal Division.

## **ISSUE**

[4] The Tribunal must determine 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*, “[a]n 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 “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## **ANALYSIS**

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

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

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

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

[12] The Applicant essentially wishes to represent again the facts of her case before the Appeal Division. However, the appeal process before the Appeal Division is not a *de novo* appeal process; in other words, it is not a new hearing on the facts of the case.

[13] Since the Applicant, in her application for leave to appeal, is not raising any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision challenged, the appeal has no reasonable chance of success.

## **CONCLUSION**

[14] Leave to appeal is refused.

*Pierre Lafontaine*

Member, Appeal Division