[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. M. C.*, 2015 SSTAD 123

Appeal No. AD-13-1152

BETWEEN:

## Canada Employment Insurance Commission

Applicant

and

## M. D

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

**INTRODUCTION**

[2]      On May 23, 2013, a Board of Referees found that:

-   The Respondent experienced an interruption of earnings under section 7 of the *Employment Insurance Act* ("the *Act*") and subsection 14(1) of the *Employment Insurance Regulations* ("the *Regulations*").

[3]     On June 6, 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 submits that the evidence before the Board of Referees clearly establishes that the Respondent did not experience an interruption of earnings. The Applicant submits that the Respondent has not proven that she had experienced an interruption of earnings.

[13]     Notwithstanding the fact that the employer issued a record of employment, the Applicant argues that the evidence shows that the Respondent has always maintained that she worked in accordance with the employer's needs, i.e. one to two days a week, and that

the employer issued a record of employment to her at her request. The Applicant contends that, in light of the evidence on the record, the Board's decision is unreasonable.

[14]     The Applicant essentially submits that 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.

[15]     The Tribunal finds that the appeal has a reasonable chance of success.

**CONCLUSION**

[16]     The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*
Member, Appeal Division