

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. F. A.*, 2015 SSTAD 124

Appeal No. AD-13-1184

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

F. A.

Respondent

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

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 March 26, 2013, a Board of Referees found that:

- The Respondent had not voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* (“the Act”).

[3] On April 12, 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] In its application for leave to appeal, the Applicant argues that the Board of Referees erred in fact and in law when it found that the Respondent had not voluntarily left her employment under sections 29 and 30 of the *Act*.

[13] The Applicant argues that the Respondent could have continued working if she had exercised her rights. It therefore contends that the Respondent voluntarily left her employment and that this was not her only reasonable alternative under sections 29 and 30 of the *Act*. In light of the evidence on the record, the Applicant argues that the Board's decision is unreasonable.

[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 finds that the appeal has a reasonable chance of success. The Applicant raised a number of questions of fact and law involving the Board of Referees' interpretation and the application of sections 29 and 30 of the *Act* the answers to which may lead to the setting aside of the decision challenged.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division