

[TRANSLATION]

Citation: *D. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 125

Appeal No. AD-14-110

BETWEEN:

**D. B.**

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

## **INTRODUCTION**

[2] On December 11, 2013, the Tribunal's General Division found that:

- The refusal of employment insurance sickness benefits under paragraph 12(3)(c) of the *Employment Insurance Act* ("the *Act*") was justified;
- The Applicant was required to repay the benefits to which she was not entitled under section 43 of the *Act*.

[3] On January 14, 2014, 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 General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the General Division 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 her application for leave to appeal, the Applicant submits that the General Division Member denied her an impartial hearing. She submits that he rejected the doctor's note and the explanations provided and that he refused to consider the case law she had submitted. He also failed to explain why he rejected the Applicant's evidence.

[13] After reviewing the appeal file, the General Division's 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 has raised a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

## **CONCLUSION**

[14] Leave to appeal is granted.

*Pierre Lafontaine*

Member, Appeal Division