[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 131

Appeal No. AD-14-475

BETWEEN:

S. B.

Applicant

and

Canada Employment Insurance Commission

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 August 6, 2014, the Tribunal's General Division found that:

> - The disentitlement imposed on the Applicant was justified under subsection 36(1) of the *Employment Insurance Act* ("the *Act*"), since he had lost an employment or been unable to resume an employment because of a work stoppage attributable to a labour dispute at the factory, workshop or other premises at which he was employed.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on August 20, 2014.

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 his 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 his application for leave to appeal, the Applicant essentially submits that the General Division erred in fact and in law in interpreting section 36 of the *Act* and that it misinterpreted the case law as establishing an irrebuttable presumption that there is a causal connection when a work stoppage occurs during a dispute.

[13] He submits that, on this point, the General Division misinterpreted *Canada (AG) v. Simoneau*, A-611-96, and *Dallaire v. Canada (AG)*, A-825-95, and that it did not consider the more recent case law.

[14] 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.

[15] The Applicant has raised several questions of fact and law relating to the General Division's interpretation and application of section 36 of the *Act* and the relevant case law where there is a dispute, the answers to which may lead to the setting aside of the decision challenged.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division