

[TRANSLATION]

Citation: *A. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 146

Appeal No. AD-14-184

BETWEEN:

**A. M.**

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 4, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On February 15, 2014, the Tribunal's General Division found that:

- The disentitlement imposed under paragraph 18(1)(a) of the *Employment Insurance Act* (“the *Act*”) was justified because the Applicant had not proved that she was available for work;
- The disentitlement imposed under sections 9 and 11 of the *Act* and subsection 30 of the *Employment Insurance Regulations* (“the *Regulations*”) was justified because the Applicant had not proved that he was unemployed;

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 21, 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 her 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 Tribunal erred in interpreting and applying the *Act* by stating that she was self-employed, something she categorically denied during her testimony, which was corroborated by the exhibits on file.

[13] The Applicant also argues that the Tribunal unfairly and unlawfully ignored the evidence submitted concerning the separate juridical personalities of the Applicant and her employer, especially since she is only a minority shareholder (33 1/3%) and employee of the employer.

[14] In her application for leave to appeal, the Applicant also submits that the General Division improperly assessed the factors set out in subsection 30(2) of the *Act* in light of the circumstances put in evidence when the case was heard.

[15] Finally, the Applicant argues that the Tribunal imposed on her a burden of proof heavier than the one specified in the *Act* as regards her intention or willingness to seek and accept alternate employment, despite the proof on a balance of probabilities submitted and not contradicted during the hearing.

[16] 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 several questions of fact and law the answer to which may lead to the setting aside of the decision attacked.

## **CONCLUSION**

[17] Leave to appeal is granted.

*Pierre Lafontaine*

Member, Appeal Division