

Citation: *P. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 171

Appeal No. AD-13-251

BETWEEN:

P. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: February 9, 2015

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (Tribunal) for leave to appeal the decision of the Board of Referees (Board) issued on January 10, 2013. The Board denied her appeal on whether or not she had just cause for voluntarily leaving her job pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act). The Board allowed her appeal on the disentitlement imposed pursuant to subsection 18(a) of the Act for falling to prove her availability for work while attending a course.

[2] The Applicant's initial claim for employment insurance benefits, of September 2, 2012, was denied by the Respondent. The Board's decision, while allowing part of the Applicant's appeal, did not result in the Applicant's entitlement for benefits.

[3] The Applicant attempted to file an application for leave to appeal (the "Application") with the Appeal Division of the Tribunal on April 12, 2013, although the Application was only received by the Tribunal on April 28, 2013. Giving the Applicant the benefit of the April 12, 2013 date, the Application was filed 92 days after the Board's decision was issued.

[4] The Application was treated as a late and incomplete application for leave to appeal and the Applicant was asked to provide further information by December 2, 2013 in order for the application to be considered to have been filed on time. The Applicant provided further information, in the form of a copy of the Board's decision, on November 7, 2013, and the Tribunal considered that the Application was complete.

ISSUE

[5] In order to succeed on this application for leave, the Applicant must show that the appeal has a reasonable chance of success.

SUBMISSIONS

[6] The Applicant submitted in support of the Application that:

- a) She was under the impression that she had won the appeal;

- b) “It’s unfair”;
- c) She feels that she is entitled to benefits for many reasons including: she paid into the EI plan for ten years, she is in debt, and she has looked for employment unsuccessfully; and
- d) She wants to change some of the information she provided to the Board.

[7] The Applicant made the arguments in paragraph [8] b) and c), above, before the Board.

LAW AND ANALYSIS

[8] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (DESD) Act*, “an 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”.

[9] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[10] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- (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, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[11] For our purposes, the decision of the Board is considered to be a decision of the General Division.

[12] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[13] I will discuss each of the Applicant's submissions in paragraph [6] above.

[14] Paragraph [6] a) is not so much a ground or reason for appeal as it is an explanation for the Applicant's delay in filing the Application. Paragraph [6] d) relates to information on the issue of her availability for work which is the part of the Board's decision that was in favour of the Applicant.

[15] This leaves paragraphs [6] b) and c). The Board had considered the Applicant's submissions as set out in paragraphs [6] b) to [6] c) and referred to these arguments in its decision at pages 2 and 3.

[16] I have read and carefully considered the Board's decision and the record. There is no suggestion by the Applicant that the Board failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Board may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[17] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

CONCLUSION

[18] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division