

Citation: *Canada Employment Insurance Commission v. G. Z.*, 2015 SSTAD 221

Appeal No: AD-14-203

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**G. Z.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: February 18, 2015

## **DECISION**

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is granted.

## **INTRODUCTION**

[2] The Respondent was separated from employment on May 3, 2012. He then received some severance payment and other funds from the former employer. He applied for Employment Insurance benefits in March 2013 and sought to antedate his claim to June 17, 2012. The Applicant denied this request. The Respondent appealed. The General Division of this Tribunal held a hearing in November 2013 and concluded that the claim should be antedated as requested by the Respondent.

[3] The Applicant sought leave to appeal from this decision. It argued that the General Division erred in fact and in law when it concluded that the Respondent acted reasonably and showed good cause for the entire delay in applying for benefits. It also relied on decisions of the Federal Court of Appeal to support its argument that ignorance of the law does not establish good cause for a delay in applying for benefits.

[4] The Respondent made no submissions.

## **ANALYSIS**

[5] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[6] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of this *Act* sets out the only grounds of appeal that can be considered to grant leave to appeal (see Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal under section 58 of the *Act* that has a reasonable chance of success on appeal.

[7] The Applicant contended that the General Division erred in law and in fact when it decided that the Respondent had acted reasonably and had shown good cause for the delay in applying for Employment Insurance benefits. In order for an error in fact to be a ground of appeal that can be considered in this matter, it must be an error that was made in a perverse or capricious manner, or without regard to the material before the General Division. The Applicant did not allege that a factual error had been made in this manner. Therefore, I am not persuaded that the General Division made any error in fact. This ground of appeal does not have a reasonable chance of success on appeal.

[8] Section 58 of the *Act* also provides that an error in law, whether or not on the face of the record, is a ground of appeal that can be considered on an application for leave to appeal. The Applicant alleged that the General Division made such an error in its application of the law, including decisions of the Federal Court of Appeal, to the facts that were before it. The General Division decision referred to the decisions of the Federal Court of Appeal that the Applicant referred to in the Application for Leave to Appeal, and to a number of decisions made by the Umpire. However there is a question whether the General Division correctly applied the legal test of whether the Respondent acted as a reasonable person would in his situation to satisfy himself of his rights and obligations. Therefore, this ground of appeal may have a reasonable chance of success on appeal.

## **CONCLUSION**

[9] The Application is granted because the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[10] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

*Valerie Hazlett Parker*  
Member, Appeal Division

## **APPENDIX**

### **Department of Employment and Social Development Act**

58. (1) 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, 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.