

[TRANSLATION]

Citation: *F. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 227

Appeal No. AD-14-480

BETWEEN:

**F. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Extension of Time and Application for Leave to**  
**Appeal**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: February 18, 2015

## **DECISION**

[1] The Tribunal grants an extension of time for leave to appeal but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On May 30, 2014, the Tribunal's General Division found that:

- The Applicant had voluntarily left his employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* ("the Act");
- The imposition of a penalty was justified in part under section 38 of the *Act*;
- The issuance of a notice of violation was not justified under section 7.1 of the *Act*.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on August 28, 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] According to the Applicant, he thought that he had nothing to pay following the General Division's decision allowing his appeal in part. When he received a statement of account, he then understood that he had misunderstood the General Division's decision, so he filed his application for leave to appeal. In the circumstances, the Tribunal is of the opinion that the interests of justice favour granting an extension of time to file the Applicant's application for leave to appeal: *X (Re)*, 2014 FCA 249; *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] 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.

[10] 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.

[11] 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.

[12] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[13] In his application for leave to appeal, the Applicant submits that the General Division allowed his appeal in part and recommended a warning rather than a monetary penalty. He concluded from the decision that he would not have anything to pay. However, to his great surprise, he received a statement of account with a balance of \$6,272 and then realized that the fine was still there. That is why he is appealing the decision.

[14] In reviewing the file, the Tribunal notes that the \$6,272 referred to by the Applicant is the net overpayment amount resulting from an act or omission (Exhibit GD-3-26). The amount owed is therefore not a monetary penalty as the Applicant claims in his application for leave to appeal, but rather an overpayment.

[15] The Tribunal finds that, in his application for leave to appeal, the Applicant does not raise any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[16] The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

## **CONCLUSION**

[17] The Tribunal grants an extension of time for leave to appeal but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division