

Citation: *Canada Employment Insurance Commission v. J. B.*, 2015 SSTAD 233

Appeal No: AD-14-230

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

J. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: February 19, 2015

DECISION

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

INTRODUCTION

[2] The Respondent established an initial claim for Employment Insurance benefits on October 27, 2013. He left his employment in Ontario to reside in New York with his spouse. Although he had applied for a work permit for New York he had not received it at the time of the General Division hearing. The Applicant decided that the Respondent could not prove that he was available for work, and imposed an indefinite disentitlement to benefits pursuant to section 18(a) of the *Employment Insurance Act*. The Respondent appealed from this decision, and after a hearing on April 17, 2014 the General Division of this Tribunal allowed the appeal, concluding that the Respondent was available for work as his inability to work was more technical than real.

[3] The Applicant sought leave to appeal from this decision. It argued that the General Division erred in fact and in law and the applicable standard of review in making its decision, and based its decision on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the material before it.

[4] The Respondent filed 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 the *Act* sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (see the

Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal that has a reasonable chance of success.

[7] The Applicant argued that the General Division erred in law, in fact and the applicable standard of review in making its decision. It did not explain what standard of review was applied by the General Division or how this was not done appropriately. Therefore, I am not satisfied that the Applicant has presented a ground of appeal based on the standard of review that has a reasonable chance of success on appeal.

[8] With respect to errors of law and of fact, it is within the purview of the General Division to make findings of fact. However, it is an error to improperly apply the law to the facts presented to the General Division. The Applicant argued that the General Division improperly applied the law to the facts when it concluded that the Respondent was not unavailable to work because he did not have a work visa. This argument points to an error or mixed law and fact made by the General Division. It is a ground of appeal that has a reasonable chance of success on appeal.

[9] The Applicant also argued that 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, when it concluded that the Respondent was not unavailable for work. The General Division concluded that the Respondent's barrier to work was more technical than real, and thus should not prevent him from receiving Employment Insurance benefits. This may have been an erroneous conclusion made without regard to the material that was before the General Division. This ground of appeal also has a reasonable chance of success.

CONCLUSION

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

[11] 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.