[TRANSLATION]

Citation: *M. A. v. Canada Employment Insurance Commission*, 2015 SSTAD 250

Appeal No. AD-14-261

BETWEEN:

M. A.

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 24, 2015

DECISION

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

INTRODUCTION

[2] On April 9, 2013, a Board of Referees found that:

- The Applicant had not accumulated the number of hours of insurable employment required under sections 7 of the *Employment Insurance Act* ("the *Act*").

[3] The Applicant filed an application for leave to appeal to the Appeal Division on April 25, 2013.

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 Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the Board of Referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) the Board of Referees 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 his 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] In his application for leave to appeal, the Applicant basically just repeats what was already put before the Board of Referees.

[13] The members of the Board of Referees had to determine the number of insurable hours worked by the Applicant during his qualifying period, which was December 4, 2011, to December 1, 2012.

[14] Under subsection 7 of the *Act*, the Applicant needed 1,190 hours to qualify for employment insurance benefits, and with all the documents on file, the Board members could only conclude that 488 insurable hours had been worked.

[15] The Applicant submits that the Board of Referees erred when it refused to take account of the judgment rendered in his favour by the Commission des normes du travail for lost wages. However, that judgment related to hours worked in 2010, prior to his qualifying period.

[16] The Tribunal finds that the Applicant is not raising any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

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

CONCLUSION

[18] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division