

[TRANSLATION]

Citation: *N. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 258

Appeal No. AD-14-557

BETWEEN:

**N. 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 25, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On August 26, 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").

[3] The Applicant filed an application for leave to appeal to the Appeal Division on November 3, 2014.

## **ISSUES**

[4] The Tribunal must determine whether to grant an extension of time and 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] In his application for leave to appeal, the Applicant states that he was waiting for the appeal form. He was also waiting for a document to submit in evidence. 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] The facts stated and documents submitted by the Applicant in support of the application for leave to appeal add nothing of significance to what was already put before the General Division. Unfortunately, an appeal to the Appeal Division is not an appeal in

which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[14] 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.

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

## **CONCLUSION**

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

*Pierre Lafontaine*

Member, Appeal Division