

[TRANSLATION]

Citation: *J. A. v. Canada Employment Insurance Commission*, 2015 SSTAD 275

Appeal No. AD-14-612

BETWEEN:

J. 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: March 2, 2015

DECISION

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

INTRODUCTION

[2] On November 14, 2014, the General Division of the Tribunal determined that:

- The Respondent validly exercised its discretion when it refused to extend the time for requesting a reconsideration of the decisions it rendered on November 28, 2008, because the Applicant did not show that he had any grounds that meet the requirements of section 1 of the *Reconsideration Request Regulations*.

[3] The Applicant filed an application for leave to appeal with the Appeal Division on December 15, 2014.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that 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 "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] According to 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] 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 that which must be met on the hearing of an appeal on the merits. The applicant at the leave stage does not have to prove his or her case.

[9] Indeed, the Tribunal will grant leave to appeal if the applicant shows that any one of the above-mentioned grounds of appeal has a reasonable chance of success.

[10] To this end, the Tribunal must be able to determine, in accordance with section 58(1) of the *Department of Employment and Social Development Act*, whether there is 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 submits that the General Division's decision was made without regard for the facts in the file, that is, his medical record, his wife's health problems, the error in serving the file, and his unsuccessful attempts to obtain a legal representative.

[13] The Tribunal has considered the file. The facts establish that the Applicant requested an administrative review of the 2008 decision in April 2014 because his collection arrangement was expiring that month. Since 2009, he has had several discussions with the collection agency regarding his debt, and, in 2014, the agency was asking him to reimburse an amount that was beyond his means. He decided to give up completely in 2009 after he failed to qualify for legal aid (Exhibit GD-3-21).

[14] Based on the evidence in the file and the Applicant's testimony, the General Division determined that he did not have a reasonable explanation for the delay, and did not have a continuing intention to file a reconsideration request.

[15] Having reviewed the appeal file, the decision of the General Division, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal does not have a reasonable chance of success. The file does not raise any question the answer to which may lead to the setting aside of the decision attacked.

CONCLUSION

[16] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division