

Citation: *S. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 333

Appeal No. AD-14-444

BETWEEN:

**S. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Late Application and Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 10, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On June 18, 2014, the General Division of the Tribunal determined that:

- The Applicant did not have sufficient hours to qualify for regular benefits pursuant to section 7 of the *Employment Insurance Act* (the “Act”);
- The Applicant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on July 31, 2014.

## **ISSUES**

[4] The Tribunal must decide if it will allow the late application and if the appeal has a reasonable chance of success.

## **THE LAW**

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the “*DESD Act*”), “an 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 *DESD 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] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (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.

[8] In regards to the late application for permission to appeal, the Applicant states that he suffered a medical setback on July 11, 2014, that delayed his application for leave to appeal. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] The Applicant, in his application for leave, states that the first hearing was adjourned by a party of interest to the hearing and the second proceeding was adjourned by the same party of interest contrary to the *Social Security Regulations*.

[11] He also submits that the employer falsely reported several records of employment that were detrimental to him. In time, a claim of misconduct was eventually overturned by the EI Reconsideration and it was reasonable for him to consider that an application for

Employment Insurance while the employer's record reflected a suspension would have surely been denied.

[12] After review of the file, the Tribunal took notice of only one adjournment. At the hearing of February 20, 2014, the Applicant indicated to the Member of the General Division that the information on the records of employment was under question and that he would have to confirm the periods during which he was on medical leave of absences. Plus, clarification of the Respondent's decision was required. The hearing was adjourned and both parties made submissions (GD9 and GD11). The hearing was continued by agreement on April 28, 2014. Therefore, this argument of the Applicant has no reasonable chance of success.

[13] In regards to his second argument that an EI application would have been denied considering his record of employment at the time, an argument already raised before the General Division, the Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[14] In view of the above, the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

## **CONCLUSION**

[15] The Tribunal allows the late application but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

*Mark Borer*

Member, Appeal Division