

Citation: *A. A. v. Canada Employment Insurance Commission*, 2015 SSTAD 337

Appeal No. AD-13-230

BETWEEN:

A. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 11, 2015

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (Tribunal) for leave to appeal the decision of the Board of Referees (Board) issued on March 28, 2013. The Board denied her appeal on whether or not a disentitlement imposed pursuant to subsection 18(a) of the *Employment Insurance Act* (Act) applies for failing to prove her availability for work.

[2] The Applicant's claim for employment insurance benefits in October 2012 was allowed by the Respondent (for benefits effective October 14, 2012), and the Applicant was given a reasonable time period to explore the labour market. Having not provided an active job search in January 2013, the Respondent advised the Applicant that employment insurance benefits would not be paid as of January 21, 2013. The Applicant appealed this imposition of disentitlement to the Board.

[3] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on April 29, 2013, having received the Board decision on April 9, 2013. The Application was filed within 30 days after receipt of the Board's decision.

[4] The Application was treated as an incomplete application for leave to appeal and the Applicant was asked to provide further information by November 13, 2013 in order for the application to be considered to have been filed on time. The Applicant provided further information, in the form of a copy of the last page of the Board's decision and a letter, on November 7, 2013, and the Tribunal considered that the Application was complete.

ISSUE

[5] In order to succeed on this application for leave, the Applicant must show that the appeal has a reasonable chance of success.

SUBMISSIONS

[6] The Applicant submitted in support of the Application that:

- a) She did everything outlined in the criteria on reasonable and customary efforts except for attending job search workshops (which were not offered to her);

- b) She was not provided other websites to use to look for jobs until the last phone call with a Commission agent, and she was under the impression that the Service Canada Job Bank site listed all available jobs;
- c) She was not provided with an opportunity for reconsideration of the January 2013 decision letter;
- d) Her evidence at the Board hearing was that she applied for a job at Atlantic Windows and for a position of Administration Assistant (i.e. two jobs) but the Board's decision states that she applied "at Atlantic Windows for the position of Administration Assistant" (i.e. one job);
- e) She and the Commission agent had a communication problem and the agent had an intimidating and accusatory tone during phone conversations; and
- f) "I feel I was treated unfairly with this decision."

[7] The Applicant made the arguments in paragraph [6] a) and b), above, before the Board.

LAW AND ANALYSIS

[8] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (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".

[9] 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".

[10] 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.

[11] For our purposes, the decision of the Board is considered to be a decision of the General Division.

[12] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[13] I will discuss each of the Applicant's submissions in paragraph [6] above.

[14] The Board considered the Applicant's submissions as set out in paragraphs [6] a) and b) and referred to submissions made by the Applicant on pages 3 and 4 of its decision.

[15] Paragraphs [6] c) refers to "reconsideration" which was not part of the process for employment insurance claims at the time of the Applicant's claim for benefits.

[16] Paragraph [6] d) suggests an erroneous finding of fact: that the Board found that the Applicant applied for one job when she had applied for two jobs. However, subsection 58(1)(c) of the DESD Act refers to an erroneous finding of fact "made in a perverse or capricious manner or without regard for the material before it". The Board considered the Applicant's evidence and submissions and the Respondent's evidence and submissions, referenced these in its decision, and found that the Applicant failed to demonstrate that she made a reasonable job search.

[17] Paragraphs [6] e) and f) suggest that the Applicant feels she was treated unfairly by the Commission's agent and the Board decision. The Applicant does not state which of the enumerated grounds of appeal may apply to these submissions.

[18] I have read and carefully considered the Board's decision, the record and the Application. There is no suggestion by the Applicant that the Board failed to observe a

principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Board may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[19] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard, and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

CONCLUSION

[20] The Application is refused.

Shu-Tai Cheng

Member, Appeal Division