Citation: A. *K. v. Canada Employment Insurance Commission*, 2015 SSTAD 453

Appeal No. AD-14-544

BETWEEN:

A. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: Aril 1st, 2015

DECISION

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

INTRODUCTION

[2] On September 15, 2014, the General Division of the Tribunal determined that:

- The Respondent did not exercise its discretion judicially but, in applying the test, found that a request for an extension of time for reconsideration would not serve the interest of justice.

[3] The Applicant requested leave to appeal to the Appeal Division on October 21, 2014.

ISSUE

[4] The Tribunal must decide 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 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.

[9] The Applicant, in his application for leave, submits that the Respondent should have never rejected his initial claim based on medical grounds as it clearly states that he was unable to work. Valid proof, documentation and material with explanation was provided to the General Division in support of his request for an extension of time. He clearly showed an intention to request reconsideration from the Respondent. He should have been granted benefits when he initially applied for EI benefits after he was medically advised to quit his job.

[10] Before the General Division, the Applicant stated that he was medically advised to rest, thus on January 2012, he resigned from his position. (Paragraph 36 of the GD decision).

[11] He also stated that his medical condition improved from January to April 2012, and that he was then capable of engaging in job search activities. (Paragraph 37 of the GD decision).

[12] Clinic notes for February 3, 2012, indicate that the Applicant was working 12-14 hours per day, as a self-employed cook and owner (paragraph 43 of the GD decision).

[13] The Applicant stated that the gap in medical evidence, from February to September 2012, was because he temporarily forgot about his medical condition while he was starting his own business. (Paragraph 71 of the GD decision). He was unable to follow-up and delayed filing a reconsideration request because he devoted his entire time and energy to opening his own business. (Paragraph 76 of the GD decision).

[14] There is no evidence before the General Division to show that the Applicant had been instructed to quit his job or to become self-employed. (Paragraph 42 of the GD decision).

[15] The General Division came to the conclusion that the Applicant's various 2011 to 2013 medical ailments, limitations and treatment would not have prevented him from filing a timely request for reconsideration. (Paragraph 87 of the GD decision).

[16] It is true that the Tribunal found that the Respondent did not apply its discretion judicially because of its failure to address whether the Applicant had an arguable case and whether prejudice to the other parties would be a factor, in accordance with subsections 1(1) and 1(2) of the *Regulations* but, after applying the correct test, the Member came to the conclusion that an extension of time to request a reconsideration of the April 2012 decision was not warranted.

[17] In his application for permission to appeal, the Applicant is essentially 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.

[18] 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 the Tribunal that the appeal has a reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division