

[TRANSLATION]

Citation: *B. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 491

Date: April 16, 2015

File number: AD-13-688

APPEAL DIVISION

Between:

B. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal (Tribunal) is granted.

INTRODUCTION

[2] The Applicant appealed to the Board of Referees from a decision by the Respondent on the following questions: Was the claimant outside the country? Did the claimant make representations that he knew were false? A penalty for three false representations was imposed by the Respondent. In a decision dated March 26, 2013, the Board of Referees dismissed the claimant's appeal.

[3] On April 22, 2013, the Applicant filed an application for leave to appeal (Application) to the Tribunal's Appeal Division.

[4] The Tribunal requested that the parties provide written submissions concerning the Application. The Applicant filed submissions through his representative. The Respondent filed a letter stating that it did not intend to make submissions concerning the Application.

ISSUE

[5] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW AND ANALYSIS

[6] 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”.

[7] 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”.

[8] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (a) the Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the Board of Referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the Board of Referees 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.

[9] A decision of the Board of Referees is considered to be a decision of the General Division.

[10] The Application 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 appeal on the merits. At the Application stage, the Applicant does not have to prove his case.

[11] The Tribunal will allow the Application if the Applicant shows that one of the above grounds of appeal has a reasonable chance of success.

[12] 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.

[13] In his Application and written submissions, the Applicant notes that:

- (a) The decision is not fair and is erroneous because it is based on a document provided by the Respondent and does not refer to what he stated;
- (b) The file was closed and two years later the file was still open;
- (c) It is stated that he did not want to provide a death certificate, but this is false;

- (d) Credibility is essential in deciding an issue relating to the imposition of a penalty; and
- (e) The Board of Referees did not deal with the Applicant's credibility and relied solely on a document from Service Canada without considering whether the false representation had been made knowingly.

These are arguments to the effect that the Board of Referees erred in law in making its decision or order, whether or not the error appears on the face of the record, and that it 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.

[14] The Board of Referees' decision indicates the following:

[Translation]

The claimant's former spouse stated that she had conveyed her former spouse's statements without worrying too much about the answers she gave. He had told her to answer yes or no almost everywhere. The members of the Board of Referees think that the question asked was clear and that the answer in the circumstances should have been simple, namely, were you outside Canada? In the claimant's case, YES.

The members of the Board of Referees believe that the claimant, through his former spouse, made representations that he knew were false. The penalties as described by the Commission in Exhibit 9, if the Commission finds that the claimant was indeed at his brother's funeral, must apply.

[15] The Board of Referees did not deal with the Applicant's credibility. The decision did not consider whether the false representation had been made knowingly, other than by concluding that "the claimant, through his former spouse, made representations that he knew were false".

[16] After reviewing the appeal file, the Board of Referees' decision and the arguments in support of the Application, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question of law (whether or not the error appears on the face of the record) or a finding of fact (made in a perverse or capricious manner or without regard for the material before the Board of Referees) the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

[17] The Tribunal grants leave to appeal to the Tribunal's Appeal Division.

[18] This decision on leave to appeal does not assume the outcome of the appeal on the merits.

[19] I invite the parties to make submissions on the form of hearing, if a hearing is appropriate, and on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division