

**Citation: *Canada Employment Insurance Commission v. J. A.*, 2015 SSTAD 498**

**Date: April 20, 2015  
File number: AD-13-1136**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**J. A.**

**Respondent**

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

## REASONS AND DECISION

### 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 April 3, 2013. The Board allowed the claimant's appeal on sick benefits although the Commission had imposed a disentitlement pursuant to sections 50 and 40 of the *Employment Insurance Act* (Act).

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on April 23, 2013.

### ISSUE

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

### THE LAW

[4] 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".

[5] 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".

[6] 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.

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

## **SUBMISSIONS**

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

- a) the Board erred in law in making its decision on the claimant's entitlement to sickness benefits when it misinterpreted section 40 of the Act;
- b) further, the Board determined that the onus of proof was that of the Commission; and
- c) the Board based its decision on an erroneous finding of fact when it concluded the claimant had proven his incapacity due to a history of depression and credibility.

## **ANALYSIS**

[9] 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.

[10] The Applicant's submissions suggest an error of law and erroneous finding of facts. In particular, the argument in paragraph 8a), above, is that the Board misinterpreted section 40 of the Act, which is an error of law. The argument in paragraph 8b), above, is that the Board applied the wrong onus of proof by determining that it was on the Commission rather than the claimant, which is an error of law. In paragraph 8c), the Applicant suggests an erroneous finding of fact (that the Board made in a perverse or capricious manner or without regard for the material before it calculation of his benefits was inaccurate) when the Board concluded that the claimant had proven his incapacity due to a history of depression and credibility.

[11] 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.

[12] The Application has set out reasons which fall into the enumerated grounds of appeal and it has satisfied me that the appeal has a reasonable chance of success.

## **CONCLUSION**

[13] The Application is granted.

[14] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[15] I invite the parties to make written submissions on the mode of hearing and whether one is appropriate and, also, on the merits of the appeal.

Shu-Tai Cheng  
Member, Appeal Division