[TRANSLATION]

Citation: ***Commission scolaire de la Capitale v. Canada Employment Insurance Commission*, 2015 SSTAD 666**

Date: June 1, 2015

File number: AD-13-371

APPEAL DIVISION

Between:

Commission scolaire de la Capitale

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 17, 2013, a Board of Referees allowed the appeal brought by the claimant, L. R., and rescinded the Commission's decision on the issue of whether the earnings received by the claimant during her benefit period were in accordance sections 35 and 36 of the *Employment Insurance Regulations*.

[3] The Applicant (the employer) filed an application for leave to appeal to the Appeal Division (Application) on June 20, 2013.

[1] By letter dated April 17, 2015, the Tribunal requested that the parties provide written submissions concerning the Application. The Respondent filed a letter stating that it did not intend to make submissions on the Application. The Applicant filed submissions. The claimant filed submissions through her representative.

ISSUE

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

THE LAW AND ANALYSIS

[3] 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".

[4] 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".

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

(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.

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

[7] An application for leave to appeal 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 for leave to appeal stage, the Applicant does not have to prove his case.

[8] The Tribunal will grant leave to appeal if the Applicant shows that any of the above grounds of appeal has a reasonable chance of success.

[9] 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.

[10] In the Application and its written submissions, the Applicant notes the following:

(a) that the employee received a vacation bank in days under the collective agreement;

(b) that the Applicant must recover the amounts paid as 4%;

(c) that the 4% is recovered at the end of the contract, when the vacation bank is paid;

(d) that the insurable amount of the 4% was already taken off from the weeks when it was paid;

(e) that it does not understand why [translation] ‘we are also removing it from Block 17A”; and

(f) that since the employee had the insurable amount of the 4% reduced twice, the appeal request should be allowed.

[11] The claimant argues in her written submissions that the Applicant [translation] “does not show any valid ground in its application for leave to appeal of June 13, 2013, other than arguing the merits of the case in which a decision has already been rendered”.

[12] The Respondent did not file any submissions.

[13] It is not up to the Member who has to determine whether to grant leave to appeal to reweigh and reassess the evidence submitted before the Board of Referees. On my reading of the file and the Board’s decision, the reasons raised by the Applicant in its application for leave to appeal (and repeated in its written submissions) were already raised before the Board of Referees.

[14] Since the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

CONCLUSION

[15] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division