

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2015 SSTAD 733

Date: June 12, 2015

File number: AD-15-209

APPEAL DIVISION

Between:

M. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On March 25, 2015, the Tribunal's General Division found that:

- The Applicant had voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act* ("the Act");
- The Applicant's earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* ("the Regulations");
- The imposition of a penalty was justified under section 38 of the Act;
- The issuance of a notice of violation was justified under section 7.1 of the Act.

[2] The Applicant filed an application for leave to appeal to the Appeal Division on April 24, 2015.

ISSUE

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

THE LAW

[4] 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".

[5] 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”.

ANALYSIS

[6] 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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

[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 hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove her case.

[8] The Tribunal will grant leave to appeal if it is satisfied that any of the stated 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 natural justice, law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[10] In light of the foregoing, does the Applicant’s appeal have a reasonable chance of success?

[11] In her application for leave to appeal, the Applicant submits that:

- the General Division Member's decision breached the rules of natural justice by proceeding by way of a telephone hearing in spite of completely contradictory elements appearing on the face of the record;
- the General Division Member's decision is itself contradictory on the issues, and the conclusions cannot be reconciled with the observation that [translation] "the Tribunal does not doubt the sincerity of the Appellant", who denies working for the alleged employer;
- the General Division Member's decision does not meet the requirements for a decision, since it fails to clearly set out the reasons why the Member did not consider the evidence filed by the Appellant showing the alleged employer's potential lack of credibility;
- the General Division Member's decision exceeds his jurisdiction and errs in law given that the very existence of the employment is in issue and it is for the Canada Revenue Agency to determine this;
- the General Division Member's decision errs in fact and in law in finding that the Commission discharged its burden of proving that the Appellant voluntarily left employment that she denies having held;
- the General Division Member's decision is wrong in fact and in law about upholding the penalty and notice of violation, having regard to the evidence on file, and is capricious in the circumstances given the claimant's testimony that she never worked for the alleged employer;
- the General Division Member's decision is unfounded in fact and in law, since it does not reflect the burden imposed in support of upholding the penalty and notice of violation, including because of the finding about the Appellant's sincerity.

[12] After reviewing the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant is raising several questions the answers to which may lead to the setting aside of the decision challenged.

CONCLUSION

[13] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division