

[TRANSLATION]

Citation: *L. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 783

Date: June 22, 2015

File number: AD-15-244

APPEAL DIVISION

Between:

L. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal agrees to grant an extension of time for leave to appeal and grants leave to appeal to the Appeal Division.

INTRODUCTION

[2] On March 11, 2015, the Tribunal's General Division found that:

- The Respondent was not available for work pursuant to paragraph 18(1)(a) of the *Employment Insurance Act* ("the Act").

[3] The Applicant filed an application for leave to appeal to the Appeal Division on May 7, 2015.

ISSUE

[4] The Tribunal must determine whether to grant an extension of time for leave to appeal and, if so, whether the appeal has a reasonable chance of success.

THE LAW

[5] 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".

[6] 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

[7] 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.

[8] The General Division made its decision on March 11, 2015. According to the Applicant, she learned of the decision on March 20, 2015. However, she did not file her application for leave to appeal until May 7, 2015.

[9] The Tribunal is of the view that the interests of justice favour granting an extension of time. The Applicant is raising arguable issues in the appeal, the delay is not excessive and the Respondent is not prejudiced by the granting of the extension: *X (Re)*, 2014 FCA 249; *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[10] In her application for leave to appeal, the Applicant submits that she was laid off and that she did not retire. She also argues that she cannot be found to be disentitled solely for holding part-time employment, since this shows her availability for work. She submits that she has been available for work for 40 years. Finally, she argues that she should be entitled to benefits because her unemployment is involuntary.

[11] 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 has raised a question relating to the General Division's interpretation and application of section 18 of the *Act*, the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

[12] The Tribunal agrees to grant an extension of time for leave to appeal and grants leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division