

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. V. L.*, 2015 SSTAD 785

Date: June 22, 2015

File number: AD-15-272

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

V. L.

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 April 23, 2015, the Tribunal's General Division found that:

- The disentitlement imposed under sections 18 and 50 of the *Employment Insurance Act* ("the *Act*") and section 9.001 of the *Employment Insurance Regulations* ("the *Regulations*") was not justified.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on May 14, 2015.

ISSUE

[4] The Tribunal must determine 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] 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 its case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] 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.

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

[12] The Applicant submits that the General Division erred under paragraph 58(1)(b) of the *Department of Employment and Social Development Act* by ruling that the Respondent was entitled to benefits under paragraph 18(1)(b) of the *Act*, which applies to sickness benefits.

[13] It argues that the Respondent did not claim sickness benefits and that there is no evidence on file confirming that the Respondent was unable to work because of an illness, injury or quarantine.

[14] It submits that the issue under appeal was the Respondent's availability pursuant to paragraph 18(1)(a) and subsection 50(8) of the *Act* and sections 9.001 to 9.004 of the

Regulations. It argues that the Respondent did not prove availability; she maintained that she was on protective reassignment from her employment as an electrician, that her employer had no light work to offer her and that she did not seek employment elsewhere.

[15] After reviewing the appeal file, the General Division's decision and the Applicant's arguments, the Tribunal finds that the Applicant has raised several questions of fact, law and jurisdiction the answers to which may lead to the setting aside of the decision attacked. The appeal therefore has a reasonable chance of success.

CONCLUSION

[16] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division