[TRANSLATION]

Citation: *D. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 778

Date: June 22, 2015

File number: AD-15-275

APPEAL DIVISION

Between:

D. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, 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 April 14, 2015, the Tribunal's General Division found that:

- The disentitlement imposed under section 18 of the *Employment Insurance Act* ("the *Act*") was justified because the Applicant had not proved her availability for work starting on July 1, 2014.

[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 her 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 confusion arose from the outset of her case and she believes she can explain herself on the issue once and for all. She states that the General Division misinterpreted her answers.

[13] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[14] The Tribunal finds that the Applicant, in her application for leave to appeal, does not raise any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[15] After reviewing the appeal file, the General Division's decision and the Applicant's arguments, the Tribunal finds that the General Division properly applied the *Faucher* criteria in assessing the Applicant's availability. The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

CONCLUSION

[16] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division