

[TRANSLATION]

Citation: *O. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 816

Date: June 25, 2015

File number: AD-15-185

APPEAL DIVISION

Between:

O. B.

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 7, 2015, the Tribunal's General Division found that:

- The disentitlement imposed under paragraph 18(a) of the *Employment Insurance Act* ("the Act") was justified because the Applicant had not proved his availability for work;
- The disqualification imposed under sections 27 and 28 of the Act was justified because the Applicant had neglected to take advantage of an opportunity for suitable employment.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on April 10, 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 his 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] In his application for leave to appeal, the Applicant submits that the Respondent refused and/or neglected to send him the recording of Rémi Boucher's examination. He argues that this is a denial of justice, since he was prevented from preparing a full answer and defence. He also argues that the notice of hearing from the General Division violated the principles of natural justice by not adequately informing him of what was at stake in the upcoming hearing.

[13] He further submits that the General Division Member improperly informed him that he could take his case before the Appeal Division without saying that he first had to obtain leave from the Tribunal.

[14] The Applicant argues that the General Division ruled on the issue of his ability to find employment even though there was no mention of this in the Respondent's reconsideration decision. He submits that, in the absence of a reconsideration decision by the Respondent concerning an aspect of the initial decision, the Tribunal's General Division could not make a decision on that aspect and that any conclusion related to it is *ultra petita*.

[15] In the alternative, he argues that the General Division did not take account of the fact that, during the past twenty (20) year as an employee of the O.P.C. company, he never worked as a carpenter-joiner or interior systems installer. He submits that the General Division therefore could not take those jobs into account as opportunities for employment or suitable employment.

[16] 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 several questions of jurisdiction, fact and law the answers to which may lead to the setting aside of the decision attacked.

CONCLUSION

[17] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division