**Citation:** ***M. J. v. Canada Employment Insurance Commission*, 2015 SSTAD 843**

**Date: July 3, 2015**

**File number: AD-13-415**

**APPEAL DIVISION**

**Between:**

**M. J.**

**Applicant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Shu-Tai Cheng, Member, Appeal Division**

## REASONS AND DECISION

## INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal of Canada (Tribunal) for leave to appeal the decision of the Board of Referees (Board) issued on March 5, 2013. The Board dismissed the claimant's appeal where the Commission had determined that the claimant did not have just cause for voluntarily leaving his employment pursuant to subsections 29 and 30 of the *Employment Insurance Act* (Act).

[2] The Applicant filed a "Notice of Appeal to the Umpire" on April 9, 2013. This Notice was treated as a late application for leave to appeal (Application) with the Appeal Division of the Tribunal.

[3] The Tribunal, by letter dated November 20, 2013, asked for a written explanation of the delay. The Applicant replied and stated that the Board decision was received by regular mail on March 13, 2013, and, therefore, the Application was filed within 30 days of receiving the Board decision.

[4] On April 17, 2015, the Tribunal requested written submissions, on whether leave to appeal should be granted or refused, from the Applicant and the Respondent. On June 12, 2015, the Tribunal requested written submissions from the employer. The Applicant did not file submissions. The Respondent filed a letter, dated April 20, 2015, advising that it would not be filing submissions. The employer did the same on June 22, 2015.

## ISSUES

[5] The Tribunal must decide if the appeal has a reasonable chance of success.

## THE LAW

[6] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division, in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant, and the Appeal Division may allow

further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

[7] According to subsections 56(1) and 58(3) of the DESD Act, “an 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”.

[8] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[9] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

(i) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(ii) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(iii) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[10] For our purposes, the decision of the Board is considered to be a decision of the General Division.

**SUBMISSIONS**

[11] The Applicant made extensive submissions in his Application. His primary argument is that the Board did not really consider his evidence and arguments on the issue of being abused and demoralized in the work place. His Application states “the board simply ignored the fact that discrimination abuse was being pertained [sic] within the workplace, it was apparent that this was not a significant factor, according to them” and that the employer was not asked to respond to his allegations of mistreatment. In addition, the Applicant notes that the two individuals responsible for the mistreatment were not present at the hearing; instead someone

unrelated to the events attended the hearing for the employer. The Applicant's secondary argument was that he tried to offer evidence to the Board at the hearing, in the form of documents and testimony relevant to the issues, but the Board stated that it did not require this proof and, instead, accepted the employer's evidence.

**ANALYSIS**

[12] I am satisfied that the Application was filed within 30 days of the Applicant receiving the Board's decision. Therefore, an extension of time is not needed.

[13] The Tribunal needs to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[14] The Applicant's submissions suggest possible erroneous finding of facts or breach of natural justice, in particular, the opportunity to be heard. Since the Board hearing was not recorded, the Tribunal is unable to hear the evidence that was given, or attempted to be given, by testimony or presented in documents at the Board hearing.

[15] In terms of the Applicant's evidence and argument before the Board in relation to mistreatment in the workplace, the Board decision noted, at page 9 and 10:

a) "The claimant stated that he was being berated and demeaned … The example he provided … seems to be fairly benign";

b) "The Board is not convinced that the claimant has shown evidence of being berated and demeaned, or having an antagonistic relationship with the employer"; and

c) "The Board considers that the claimant was generally unhappy in his employment and his personal progress ..."

[16] The Tribunal has considered the Applicant's allegations that the Board did not allow him to present some of his evidence in light of the Board's brief remarks on the issue of mistreatment and its finding that the claimant was unhappy in his employment. Taken together, the arguments in paragraph 11, above, suggest erroneous findings of fact (that the Board made

in a perverse or capricious manner or without regard for the material before it) or a breach of natural justice (lack of opportunity to be heard) when the Board concluded that the Applicant left his employment voluntarily without just cause.

[17] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal.

[18] The Application has set out reasons which fall into the enumerated grounds of appeal, and I am satisfied that the appeal has a reasonable chance of success.

## CONCLUSION

[19] The Application is granted.

[20] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[21] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division