

[TRANSLATION]

Citation: *J. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 874

Date: July 13, 2015

File No.: AD-15-395

APPEAL DIVISION

Between:

J. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision rendered by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal grants the extension of time to file the application for leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On July 27, 2012, a Board of Referees found that:

- At the time of filing his claim for benefits in 2008, the Applicant's place of residence was X.

[3] On June 23, 2015, the Applicant filed an application for leave to appeal before the Appeal Division.

ISSUES

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

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development 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."

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

ANALYSIS

[7] In accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (a) the Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the Board of Referees erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the Board of Referees 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 Applicant stated that he received the Board of Referees' decision only after numerous interventions on the part of his member of Parliament. The Member of Parliament last intervened on May 27, 2015, when she filed a formal request to obtain a copy of the Board of Referees' decision with the Minister of Employment and Social Development. The Applicant subsequently filed his application for leave to appeal on June 23, 2015, that is, within 30 days after the decision was communicated to him.

[9] Even if the Tribunal were to find that the Applicant's application for leave to appeal was made late, under the circumstances, the interest of justice favours granting the extension of time to file the application for leave to appeal – *X (Re)*, 2014 FCA 249; *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[10] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[11] The Tribunal will grant leave to appeal if it is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[12] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[13] Given the foregoing, does the Applicant's appeal have a reasonable chance of success?

[14] In his application for leave to appeal, the Applicant submits that the Board of Referees failed to consider the fact that he had previously obtained a favourable decision from another Board of Referees regarding the same issue. He submits that the situation prejudiced him and that he had to resort to social assistance.

[15] After reviewing the appeal docket, the Board of Referees' decision dated July 27, 2012, the decision dated June 16, 2011, and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised a mixed question of fact and law whose response might justify setting aside the decision under review.

CONCLUSION

[16] The Tribunal grants the extension of time to file the application for leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division