

**Citation: *Canada Employment Insurance Commission v. L. M.*, 2015 SSTAD 942**

**Date: July 30, 2015**

**File number: AD-13-1170**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**L. M.**

**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 17, 2013, a board of referees determined that:

- The appeal should be allowed on the denial of an extension to the 30 day appeal period for lodging an appeal to the Board of Referees, pursuant to section 114 of the *Employment Insurance* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on April 29, 2013.

### **ISSUE**

[4] The Tribunal must decide if 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* (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”.

[6] 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”.

### **ANALYSIS**

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

- (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, whether or not the error appears on the face of the record; or
- (c) The Board of Referees 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.

[8] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant submits that the Board of Referees erred in law when it gave the Respondent the benefit of doubt to extend the 30 day appeal period. Benefit of doubt pursuant to section 49(2) of the *Act* only applies to issues of voluntary leaving and misconduct. The Board of referees exceeded its jurisdiction when it determined the Respondent had special reasons justifying her delay in appealing rather than determining if the Applicant had exercised its discretion judicially in refusing to accept her delayed appeal.

[10] The Applicant submits that it exercised its discretion judiciously as it considered the reasons provided by the Respondent and determined she had failed to show that her circumstances prevented her from appealing an overpayment and penalty issue of a decision.

[11] After reviewing the docket of appeal, the decision of the Board of Referees and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[12] The Applicant has set out several reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[13] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division