

**Citation:** *Canada Employment Insurance Commission v. F. S.*, 2015 SSTAD 944

**Date:** July 30, 2015

**File number:** AD-13-1179

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**F. S.**

**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 25, 2013, a board of referees determined that:

- A disentitlement was not imposed in accordance with section 37 of the *Employment Insurance Act* (the “*Act*”) and Section 55 of the *Employment Insurance Regulations* (the “*Regulations*”);
- The imposition of a penalty was not justified in accordance with section 38 of the *Act* for making a misrepresentation by knowingly providing false or misleading information to the Applicant;
- A notice of violation was not issued in accordance with section 7.1 of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on April 12, 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 evidence on file clearly shows that the Respondent was outside Canada from February 16, 2012 to February 29, 2012. She therefore is subject to a disentitlement under section 37(b) of the *Act* because the reason for her absence from Canada met none of the prescribed exceptions under section 55(1) of the *Regulations*. The Applicant pleads that she is subject to a penalty and a notice of violation because she failed to declare her absence from Canada.

[10] The Applicant further submits that the Board of Referees erred in law when it concluded that the Respondent was entitled to benefits while outside Canada and erred in fact and in law by removing the penalty and notice of violation.

[11] The Applicant finally submits that based on the evidence, the decision of the Board of Referees is unreasonable.

[12] 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. 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