

**Citation: *Canada Employment Insurance Commission v. C. G.*, 2015 SSTAD 946**

**Date: July 30, 2015**

**File number: AD-13-1150**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**C. G.**

**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 June 12, 2013, a board of referees determined that:

- The Respondent had sufficient hours of insured employment to qualify for employment insurance benefits pursuant to section 7 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on June 27, 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 Respondent was a new entrant/re-entrant to the workforce and pursuant to s. 7(3) of the *Act*, required 910 insurable hours in her qualifying period to receive regular benefits. Based on a *Canada Revenue Agency* ruling, it was determined the Respondent had only 888 insurable hours. The Applicant submits that the Board of Referees exceeded its jurisdiction and erred in law when it accepted evidence at the hearing that the Respondent had additional insurable hours sufficient to qualify.

[10] The Applicant pleads that the insurability and quantum of insured hours rests with the *Canada Revenue Agency* pursuant to section 90(1) of the *Act* and that the Board of Referees has no jurisdiction on this matter. The Board of Referees further erred in law in allowing the appeal.

[11] The Applicant finally submits that the information before the Board of Referees confirmed the Respondent did not meet the requirements of s. 7(3) of the *Act* and with no discretion on this matter, the appeal should have been dismissed.

[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