

Citation: *K. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 1040

Date: August 31, 2015

File number: AD-15-103

APPEAL DIVISION

Between:

K. B.

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 (Tribunal) for leave to appeal the decision of the General Division (GD) of the Tribunal issued on January 29, 2015. The GD dismissed her appeal on availability for work and imposition of a penalty.

[2] The Applicant received the GD decision on February 23, 2015 and filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on March 5, 2015. The Application was filed within the 30 day time limit.

ISSUE

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

SUBMISSIONS

[4] The Applicant submitted in support of the Application that:

- a) During the time of her receiving EI benefits, she was in an abusive marriage;
- b) At the current time, she is financially stranded by her ex-husband and going through a nasty divorce and custody battle;
- c) Her ex-husband sent in the information which resulted in the overpayment; and
- d) She is under financial strain because of her ex-husband.

LAW AND ANALYSIS

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

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

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) 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.

[8] The Tribunal must 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.

[9] The Applicant's submissions, as set out in paragraph [4] above were made before the GD. The Applicant attended the teleconference hearing and gave oral evidence, in addition to the materials already in the file.

[10] The General Division considered the Applicant's evidence and submissions at pages 7 to 9 and of its decision. The GD found that the Applicant did not meet the onus to demonstrate that she was capable of and available for work and that she misrepresented her availability and absence from Canada. It further found that the Commission exercised its discretion on the penalty in a judicial manner.

[11] I have read and carefully considered the GD's decision and the record. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[12] 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. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

[13] While the Tribunal is sympathetic to the personal circumstances of the Applicant, it must 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. As the reasons for appeal do not fall into any of the enumerated grounds of appeal, leave cannot be granted.

CONCLUSION

[14] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division