

**Citation: *Canada Employment Insurance Commission v. J. B.*, 2015 SSTAD 1095**

**Date: September 16, 2015**

**File number: AD-15-978**

**APPEAL DIVISION**

**Between:**

**Canada Employment Insurance Commission**

**Applicant**

**and**

**J. B.**

**Respondent**

**Decision by: Pierre Lafontaine, Member, Appeal Division**

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On July 29, 2015, the General Division of the Tribunal concluded that:

- The Applicant did not exercise its discretion in a judicial manner when it decided not to write-off all or part of an outstanding amount that the Respondent owed following an overpayment.

[3] The Applicant requested leave to appeal to the Appeal Division on September 10, 2015. The decision of the General Division was communicated to the Applicant on August 7, 2015.

### **ISSUES**

[4] The Tribunal must decide if it will grant an extension of time to file the application for permission to appeal and 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 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 Applicant filed its application for permission to appeal two days late. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the extension of time to file the application for permission to appeal without prejudice to the Respondent - *X (re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2. F.C. 263 (F.C.A.)

[9] 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.

[10] The Applicant argues that the General Division exceeded its jurisdiction in making a decision with regard to the issue of write-off. The Applicant submits that the General Division lacks the proper jurisdiction to make a decision regarding the write-off of the Respondent's debt because the Social Security Tribunal is bound by section 112.1 of the *Act*.

[11] Furthermore, the Applicant submits that the Supreme Court of Canada, the Federal Court of Appeal, and the Tribunal at the General and Appeal Divisions have all made it clear that write-off decisions under section 56 of the *EI Regulations*, are not decisions that could

be appealed to the Board of Referees/the SST. They can only be challenged by way of application for judicial review to the Federal Court.

[12] After reviewing the docket of appeal, the decision of the General Division 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 raised a question of jurisdiction that could possibly lead to the reversal of the disputed decision.

### **CONCLUSION**

[13] The Tribunal grants an 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