

[TRANSLATION]

Citation: *A. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1075

Date: September 12, 2015

File number: AD-15-848

APPEAL DIVISION

Between:

A. S.

Applicant

and

Canada Employment Insurance Commission

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 9, 2015, the Tribunal's General Division concluded that:

- Refusing to grant the Applicant an extension of the time to file an appeal before the Tribunal's General Division was justified.

[3] On July 13, 2015, after receiving the decision dated June 22, 2015, the Applicant filed an application for leave to appeal before the Appeal Division.

ISSUE

[4] The Tribunal must decide whether 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*, "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 *Department of Employment and Social Development 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] In accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[11] Given the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her application for leave to appeal, the Applicant argues that the General Division:

- appears to be mistaken about the date of the decision refusing the write-off without considering the date on which she was made aware of the decision;
- committed an error of law by limiting the reasons that may justify granting an extension of the time to file an appeal to efforts made exclusively with the Tribunal;

- committed an error of law by concluding that the Commission was not authorized to write off a debt;
- committed an error of law by concluding that the appeal had no chance of success, when the write-off issue is currently before the Federal Court of Appeal and is a recent judicial development following Justice Stratas' ground in *Steel*;
- failed to observe a principle of natural justice by proceeding with written representations in the difficult circumstances cited by the Applicant.

[13] After reviewing the appeal docket, the General Division's decision and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. Thus, the Applicant raised a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division