

**[TRANSLATION]**

**Citation: *R. T. v. Canada Employment Insurance Commission*, 2015 SSTAD 1084**

**Date: September 13, 2015**

**File number: AD-15-857**

**APPEAL DIVISION**

**Between:**

**R. T.**

**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 19, 2015, the Tribunal's General Division concluded that:

- Imposing a disentitlement on the Applicant with amendments under section 37 of the *Employment Insurance Act* (the Act) and section 55 of the *Employment Insurance Regulations* (the Regulations) was justified because she was outside Canada;
- Imposing a non-monetary warning instead of penalty under sections 38 and 41.1 of the Act was justified.

[3] On July 17, 2015, after receiving the General Division's 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] The Applicant, in her application for leave to appeal, essentially submits that the General Division erred by failing to render a clear and unambiguous decision with respect to her application. She argued that the General Division did not specify the amendments granted in its conclusions.

[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. 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