

Citation: *R. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1101

Date: September 17, 2015

File number: AD-15-583

APPEAL DIVISION

Between:

R. 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 16, 2015, the General Division of the Tribunal decided that:

- An extension of time for the Applicant to appeal to the General Division of the Social Security Tribunal was refused.

[3] The Applicant requested leave to appeal to the Appeal Division on July 16, 2015.

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 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] 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 has a reasonable chance of success, before leave can be granted.

[9] The Applicant argues that her appeal was filed on time and that she was only missing the reconsideration decision. She promptly sent the missing information during the holiday period. The Tribunal accused reception of the reconsideration decision on January 6, 2015. The Applicant submits that this meant the General Division now had her complete appeal package, and it was clear that she wanted to pursue the appeal, and that the explanation for the delay was not only matter of fact, it was also stated in her fax. She pleads that it was a miscarriage of justice for the General Division not to have considered her appeal.

[10] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raises questions regarding the interpretation and application by the General Division of section 52.(2) of the *DESD Act*.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division