

**Citation: *T. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1076**

**Date: September 12, 2015**

**File number: AD-15-858**

**APPEAL DIVISION**

**Between:**

**T. S.**

**Applicant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

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

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On May 31, 2015, the General Division of the Tribunal determined that:

- A disentitlement was to be imposed to the Applicant in accordance to subsection 18(a) of the *Employment Insurance Act* (the “*Act*”) for failing to prove her availability for work while attending a course of instruction.

[3] The Applicant requested leave to appeal to the Appeal Division on July 17, 2015 after receiving the General Division decision on June 16, 2015.

### **ISSUES**

[4] The Tribunal must decide if it will grant an extension of time to file leave to appeal and 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] The Tribunal finds that, although the application for permission to appeal was filed one day late, it is in the interest of justice to grant the Applicant an extension of time to file her 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 she did not get an oral hearing and that the complexity of her file could not be dealt with appropriately with a teleconference hearing. She pleads that the General Division failed to observe a principal of natural justice by not allowing an in person hearing when there was an issue of credibility.

[11] 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 has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

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

*Pierre Lafontaine*  
Member, Appeal Division