

Citation: *F. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 1085

Date: September 13, 2015

File number: AD-15-431

APPEAL DIVISION

Between:

F. M.

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 May 29, 2015, the General Division of the Tribunal determined that:

- The Applicant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on July 6, 2015 after receiving the General Division decision on June 5, 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 to 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 of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant's submits that the General Division based its decision on an erroneous finding of fact relating to facts critical to a proper understanding of the Applicant's arguments before the General Division.

[10] The Applicant argues that the decision reveals a failure on the part of the Member to fully appreciate the impact of his circumstances which were directly relevant to his arguments. He submits that he does not speak English, and that he had some difficulty at one point in the hearing with translation. The fact that the tribunal member made an adverse finding of credibility against the Applicant because of that difficulty with translation leads to an inevitable apprehension of bias, which taints the proceeding.

[11] The Applicant also argues that the tribunal member failed to understand the cultural and social context surrounding the Applicant's antedate claim, which would be necessary to an impartial decision. That failure, he pleads, leads to the conclusion that the decision failed to observe a principle of natural justice.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his 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

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

Pierre Lafontaine
Member, Appeal Division