

[TRANSLATION]

Citation: *H. G. v. Canada Employment Insurance Commission*, 2015 SSTAD 1102

Date: September 17, 2015

File No.: AD-15-895

APPEAL DIVISION

Between:

H. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision rendered by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal (the Tribunal) grants leave to appeal before its Appeal Division.

INTRODUCTION

[2] On July 15, 2015, the Tribunal's General Division determined the following:

- The Applicant had not accumulated a sufficient number of hours of insurable employment to qualify for Employment Insurance benefits under section 7 of the *Employment Insurance Act* (the Act).

[3] On August 6, 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] As stated in 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* states that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] Pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are as follows:

- (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;
- (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] 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 is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Applicant does not have to prove her case.

[9] Leave to appeal is granted if the Tribunal is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be able to determine, under 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] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her application for leave to appeal, the Applicant submitted that she had the number of hours required to qualify for Employment Insurance benefits. She submitted that she received the payment of 30 insurable hours from her employer in May 2014 for work done in 2013. She also disputed the unemployment rate applied by the Respondent and argued that she accumulated sufficient hours (603) even without the May 2014 payment because she needed to accumulate 595 hours.

[13] After reviewing the appeal file, the decision of the General Division and the arguments made in support of the application for leave to appeal, the Tribunal determines that the appeal has a reasonable chance of success. The Applicant raised several questions of fact

and law concerning the General Division's interpretation and application of section 7 of the Act whose responses might justify setting aside the decision under review.

CONCLUSION

[14] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division