

**[TRANSLATION]**

**Citation: *A. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 1170**

**Date: September 30, 2015**

**File No.: AD-15-1026**

**APPEAL DIVISION**

**Between:**

**A. B.**

**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 June 12, 2015, the Tribunal's General Division determined the following:

- The Applicant failed to prove that he had just cause for leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act).

[3] On September 16, 2015, the Applicant filed an application for leave to appeal before the Appeal Division after receiving notice of the decision on August 27, 2015.

### **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 his 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] The Applicant submitted that the General Division erred in law when it determined that there was a voluntary leaving even though the employer stated several times that the position in question was on-call only and that there was no guarantee of hours.

[13] He also submitted that the General Division erred in law in its assessment of the evidence and when it imposed, in the circumstances of the employment, the prior obligation to contact his supervisor again.

[14] 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 whose responses might justify setting aside the decision under review.

## **CONCLUSION**

[15] The Tribunal grants leave to appeal before its Appeal Division.

*Pierre Lafontaine*  
Member, Appeal Division