

[TRANSLATION]

Citation: *R. T. v. Canada Employment Insurance Commission*, 2015 SSTAD 1171

Date: September 30, 2015

File No.: AD-15-1021

APPEAL DIVISION

Between:

R. T.

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 August 18, 2015, the Tribunal's General Division determined the following:

- The disentitlement imposed under sections 9 and 11 of the *Employment Insurance Act* (the Act) was justified because the Applicant failed to prove he was unemployed;
- The disentitlement imposed under subsection 36(1) of the Act because the Applicant lost his employment or was unable to resume employment due to an interruption of work resulting from a labour dispute at the workshop or any other location where he worked was justified.

[3] On September 14, 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 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 incorrectly applied the Act and therefore committed a decisive error of law. He submitted that subsection 11(4) of the Act applies when there is evidence to show that the claimant worked more than the number of hours that are usually worked in a week by a person employed full-time.

[13] The Applicant argued that the General Division failed to determine whether, according to the evidence before it, the Applicant had worked more than the number of hours that are usually worked in a week by a person employed full-time. The Applicant also submitted that the burden of proof lies with the Respondent and that this burden was not met.

[14] He submitted that none of the evidence submitted to the General Division supported its conclusion that a portion of the Applicant's compensation was set aside for the period in which he did not work. He argued that the evidence undisputed by the Respondent showed otherwise.

[15] The Applicant submitted that the General Division acted beyond its jurisdiction when it decided that the Applicant was not unemployed pursuant to subsection 11(3) of the Act, since that issue was not before it. The Applicant submitted that the General Division failed to observe a principle of natural justice when it decided that the Applicant was not unemployed pursuant to subsection 11(3) without giving the parties an opportunity to share their points of view on the issue.

[16] 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 natural justice, fact and law whose responses might justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division