

[TRANSLATION]

Citation: *F. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 1268

Date: October 29, 2015

File number: AD-15-1132

APPEAL DIVISION

Between:

F. R.

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 September 8, 2015, the Tribunal's General Division found that:

- A disentitlement should be imposed on the Applicant in accordance with sections 9, 11(1) and 11(4) of the *Employment Insurance Act* ("the Act") concerning their unemployment status.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on October 14, 2015 after the General Division's decision was communicated to her on September 15, 2015.

ISSUE

[4] The Tribunal must determine 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*, "[a]n 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* provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove her case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant submits that the Tribunal's General Division erred in law by relying on *Buchanan* to interpret subsection 11(4) of the *Act*. She also submits that *Buchanan* had no application in this case, since the facts underlying that decision were completely different than the facts in issue.

[13] She argues that the *Employment Insurance Act* is a federal statute and cannot be interpreted using provincial statutes. Provincial statutes that establish normal work weeks differ from one province to another. Because of those differences in provincial statutes, the *Act* would, as a result, not be applied uniformly.

[14] She also submits that the material in the Respondent's file never included evidence of an agreement between her and her employer providing for a period of leave or days off following an intensive work week. The Respondent never proved through its investigation that the Respondent worked a greater number of hours than are normally worked in a week by persons employed in full-time employment in the same field. In its decision, the General Division never considered that lack of evidence, and its decision is therefore based on erroneous findings of fact and was made without regard for the material put in evidence.

[15] After reviewing the appeal file and the General Division's decision, and having regard to the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. In this case, there are questions of fact and law the answers to which may lead to the setting aside of the decision attacked.

CONCLUSION

[16] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division