

[TRANSLATION]

Citation: *C. C. v. Canada Employment Insurance Commission*, 2015 SSTAD 1315

Date: November 10, 2015

File number: AD-15-1168

AAPPEAL DIVISION

Between:

C. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 19, 2015, the Tribunal's General Division concluded as follows:

- 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 October 29, 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] According to 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 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] In accordance with section 58(1) of the 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 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] A leave to appeal proceeding 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 leave stage, the Applicant does not have to prove his or her case.

[9] The Tribunal grants leave to appeal if it 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, pursuant to subsection 58(1) of the 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 the CRA's decision was not based on any legal evidence, but rather on testimonies of people indirectly threatened and coerced by the investigator in the case. She argued that there was nothing to prove the authenticity of the relationship between S. G. and M. C. She wanted to see the documents on which the CRA based its conclusion.

[13] The Applicant essentially disputed the CRA's findings according to which her employment was not insurable given her non-arm's length relationship.

[14] The General Division stated the following in its decision:

[Translation]

[14] The Tribunal would like to reiterate that it does not have the authority to determine whether or not an employment is insurable or whether or not the hours associated with an employment are insurable. This authority belongs to the CRA, then the TCC. Paragraph 90(1)(d) of the Act very clearly indicates that it is up to the Minister of National Revenue (the CRA) to make a ruling on

how many hours an insured person has had in insurable employment. In *Canada (Attorney General) v. Levesque* (2001 FCA 304), the Federal Court of Appeal is very clear on the fact that the Tribunal could not “remove the defect from the claim” and that this requirement of the Act “does not allow any discrepancy”.

(Emphasis added by the undersigned)

[15] On June 1, 2015, the Applicant withdrew her case before the *Tax Court of Canada* (TCC, GD3-38 to 40), leaving intact the CRA’s decision to consider her employment as not insurable.

[16] For the reasons stated above, the Tribunal concludes that the appeal has no reasonable chance of success.

CONCLUSION

[17] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division