

Citation: *I. O. v. Canada Employment Insurance Commission*, 2015 SSTAD 1447

Date: December 17, 2015

File number: AD-15-1303

APPEAL DIVISION

Between:

I. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal grants the request for an extension of time to file the application requesting leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On August 21, 2015, the General Division determined that:

- The Applicant had insufficient hours of insured employment to establish a claim pursuant to section 7 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on December 1st, 2015 after receiving the General Division decision on October 9, 2015.

ISSUES

[4] The Tribunal must decide if it will allow the late application and if 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* (the “*DESD 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 *DESD 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] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (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; or
- (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] In regards to the late application for permission to appeal, the Applicant states that there was confusion regarding the interpretation of the General Division decision since he was under the impression that he had won his case. He was later told by the Respondent that he did not win and was advised to appeal to the Appeal Division which he did. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success before leave can be granted.

[10] The Applicant argues that the General Division ruled in his favor and that the Respondent is refusing to follow the decision. The Applicant disputes the fact that he needs 875 hours of insurable hours since this finding of the General Division is over and above the required hours for him to get his benefits according to the *Act*.

[11] He further pleads that the General Division even recommended in its conclusion fewer hours to the Respondent. He argues that he has enough hours since the number of hours required is 700 hours and he has 724 hours.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[13] The Tribunal grants the request for an extension of time to file the application requesting leave to appeal and grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division