



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 32

Date: January 25, 2016

File number: AD-13-719

APPEAL DIVISION

Between:

V. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On June 25, 2013, a Board of Referees found that:

- The amounts the Appellant received from Air Canada constitute earnings under section 35 of the *Employment Insurance Regulations* (Regulations) and must therefore, in accordance with subsection 36(9) of the Regulations, be allocated as of his termination of employment from Air Canada.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on July 18, 2013.

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* states 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 following are the only grounds for appeal:

(a) the Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the Board of Referees 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] 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 his 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] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact, or jurisdiction to which the 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 Tribunal finds that the Board of Referees had unanimously accepted the Applicant's appeal in this file.

[13] The Tribunal finds it difficult to understand why the Applicant would file an appeal considering he had won his case before the Board of Referees.

[14] Furthermore, the Tribunal notes that the Commission had appealed the Applicant's file as it was dissatisfied with the outcome before the Board of Referees (AD-13-661).

[15] Under the circumstances, the Tribunal has no choice but to refuse the Applicant's request for leave to appeal as it is not applicable.

CONCLUSION

[16] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division