



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. R. v. Canada Employment Insurance Commission*, 2016 SSTADEI 55

Tribunal File Number: AD-16-153

BETWEEN:

**T. R.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal decision**

---

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 1<sup>st</sup>, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On December 11, 2015, the General Division of the Tribunal determined that:

- The denial of an antedate request by the Applicant under subsection 10 ( 4) of the *Employment Insurance Act (Act)* should be upheld;
- The Applicant did not have sufficient hours of insured employment to establish a claim for employment insurance benefits (benefits) according to section 7 of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on January 12, 2016 after receiving the decision of the General Division on December 22, 2015.

### **ISSUE**

[4] The Tribunal must decide 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 application for leave 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.

[9] In support of his application for leave to appeal, the Applicant repeats the facts he already submitted to the General Division for appreciation. He argues that he did not know that he had to apply within four weeks because he was contesting his work suspension and that applying for benefits was the last thing on his mind. He submits that after one year, he can clearly see that the wrongful suspension will stand.

[10] The Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[11] Unfortunately for the Applicant, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[12] The Applicant, although requested in the appeal application form, has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[13] After review of the appeal file, the decision of the General Division and the arguments of the Applicant in support of his application for leave to appeal, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[14] The Tribunal refuses leave to appeal to the Appeal Division of the Tribunal.

*Pierre Lafontaine*

Member, Appeal Division