



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. N. v. Canada Employment Insurance Commission*, 2016 SSTADEI 56

Tribunal File Number: AD-16-162

BETWEEN:

K. N.

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 1st, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 17, 2015, the General Division of the Tribunal determined that:

- With respect to the question of the overpayment on the grounds of self-employment, the appeal was to be allowed in part until July 31, 2008;
- With respect to the question of the warning, the appeal was to be dismissed.

[3] The Applicant requested leave to appeal to the Appeal Division on January 15, 2016.

ISSUE

[4] The Tribunal must decide 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 application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above 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 permission to appeal, the Applicant argues that the General Division concluded and based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard to the material before it.

[10] He submits that contrary to the findings of the General Division, he did look for work until March 3, 2009 and not July 2008. He was looking in the wide domain of technical and civil engineering jobs, not a narrow search as the Tribunal wrongfully states in its decision. He also pleads that the evidence does not demonstrate that he invested personally \$50,000.00 in the business but that this amount was only cost of goods sold.

[11] He further submits that the General Division based its decision on an incorrect analysis of the company's financial statements. He finally submits that the General Division is unreasonable since it assumes that all the company work was done by him

(and not his son) and that he was not actively looking for employment during the benefit period.

[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 leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division