



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 91

Tribunal File Number: AD-16-190

BETWEEN:

**L. C.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 15, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On January 5, 2016, the Tribunal's General Division found that:

-The Applicant's appeal to the General Division was prescribed under subsection 52(2) of the *Department of Employment and Social Development Act (DESD Act)*.

[3] On January 19, 2016, the Applicant filed an application for leave to appeal before the Appeal Division.

### **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 of appeal:

(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] 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] In his application for leave to appeal, the Applicant submits that he did not get the chance to complete his appeal file before the General Division because he never received the letter that was supposedly sent to him requesting that he complete his file. He argues that he has been denied his right to appeal.

[13] The Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question of natural justice and of interpretation of subsection 52(2) of the DESD Act, the answer to which may lead to the setting aside of the decision challenged.

## **CONCLUSION**

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

*Pierre Lafontaine*  
Member, Appeal Division