



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 92

Tribunal File Number: AD-16-210

BETWEEN:

S. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

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 December 15, 2015, the Tribunal's General Division found that:

- The disentitlement imposed under sections 9 and 11 of the *Employment Insurance Act* (Act) and section 30 of the *Employment Insurance Regulations* (Regulations) was partly justified because the Applicant failed to prove that he was unemployed.

[3] On January 27, 2016, after receiving the General's Division's decision on December 29, 2015, the Applicant filed an application for leave to appeal.

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] The Applicant states that the General Division prevented him from presenting complete evidence given its initial directions before the hearing. The General Division erred in deciding that this evidence was not a part of the case.

[13] The Applicant maintains that the facts relevant to the case clearly show that he was either working as a salaried employee, or he was looking for employment. This evidence also clearly shows that the General Division should have accepted all the evidence submitted by the Applicant and his representative, be it verbal or written in a document, analyse it and, if necessary, explain why it was denied.

[14] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised several questions of fact, law and natural justice, the answers to which may lead to the setting aside of the decision challenged.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division