



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. D. M.*, 2016 SSTADEI 114

Tribunal File Number: AD-16-263

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

D. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 26, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On February 1st, 2016, the General Division of the Tribunal determined that:

- There should not have been a disentitlement imposed pursuant to subsection 18(a) of the *Act* for the Respondent failing to prove his availability for work.

[3] The Applicant requested leave to appeal to the Appeal Division on February 11, 2016.

ISSUE

[4] The Tribunal must decide if it 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 mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success before leave can be granted.

[9] The Applicant's submits that the decision of the General Division is unreasonable considering the evidence before it. The evidence is undisputed that notwithstanding the Respondent's transportation issues, he had not looked for work after his temporary separation from employment on February 24, 2015 until the week of April 5, 2015 and has therefore not met the legal test for availability up to that date.

[10] The Applicant further submits that the General Division erred in law by failing to apply the correct legal test for "availability" established by the jurisprudence. In *Faucher v. Canada (CEIC)*, A-56-96, the Federal Court of Appeal established that the legal test to prove availability within the meaning of the *Act* must be determined by analyzing three factors: the desire to return to the labour market as soon as a suitable job is offered; the expression of that desire through efforts to find a suitable job; and not setting personal conditions that might unduly limit the chances of returning to the labour market.

[11] The Applicant finally argues that a proper application of the facts of this case to the correct legal test for availability leads to the reasonable conclusion that the Respondent has not proven availability for work within the meaning of the *Act* and jurisprudence.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its 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