



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 126

Tribunal File Number: AD-16-164

BETWEEN:

**S. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division – Leave to Appeal**

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DECISION BY:: Pierre Lafontaine

DECISION DATE March 7, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On December 11, 2015, the Tribunal's General Division found that:

The disentitlement imposed under paragraph 18(a) of the *Employment Insurance Act* (Act) was justified because the Applicant failed to prove that she was available for work.

[3] On January 15, 2016, the Applicant filed an application for leave to appeal before the Appeal Division after receiving the General Division's decision on December 20, 2015.

### **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 hurdle for the Applicant to meet, but it is lower 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 her 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 support of her application for leave to appeal, the Applicant filed a copy of a medical certificate that had already been presented to the General Division (GD2-12), and provided additional information regarding her availability (AD1-1 to AD1-4).

[13] On January 20, 2016, the Tribunal wrote to the Applicant in order to obtain her reasons for appeal. She called the Tribunal on three occasions to obtain clarifications on the Tribunal's request. On February 22, 2016, the Applicant finally responded to the Tribunal in writing.

[14] In her letter of February 22, 2016, the Applicant reiterated the facts that she had already presented to the General Division and underscored once more the contradictions in two medical certificates that provide different diagnoses for the same period. The contradictions were significant and reduced the certificates' probative value as far as the General Division was concerned (paragraph 35, General Division decision).

[15] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a *de novo* hearing, that is, a hearing where a party can present his or her evidence again and hope for a favourable decision.

[16] The Tribunal finds that the Applicant, in her application for leave to appeal and in her written response to the Tribunal, does not raise any question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision under review.

[17] After reviewing the appeal file, the General Division's decision, and the Applicant's arguments, the Tribunal finds that the General Division properly applied the *Faucher* criteria in assessing the Applicant's availability. The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

## **CONCLUSION**

[18] Leave to appeal is refused.

*Pierre Lafontaine*

Member, Appeal Division