



[TRANSLATION]

Citation: *M. V. v. Canada Employment Insurance Commission*, 2016 SSTADEI 139

Appeal Number: AD-16-376

BETWEEN:

**M. V.**

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 11, 2016

## REASONS-AND DECISION

### DECISION

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

### INTRODUCTION

[2] On February 15, 2016, the Tribunal's General Division found that:

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

[3] On February 29, 2016, the Applicant filed an application for leave to appeal to 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 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 her application for leave to appeal, the Applicant states that the Respondent acknowledged its error when it granted her 44 weeks of benefits and that it had been aware of her situation as of November 4, 2012. She maintains that she should not have to pay

back the amount in question because she had acted in good faith and had disclosed her situation to the Respondent at the start of her claim for benefits.

[13] The Tribunal notes that the General Division had underlined the Respondent's contradictory statements in the present file regarding the use of its reconsideration authority under section 52 of the Act.

[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 a question of fact and law, the answer to which may lead to the setting aside of the decision challenged.

## **CONCLUSION**

[15] Leave to appeal is granted.

*Pierre Lafontaine*

Member, Appeal Division