



[TRANSLATION]

Citation: *R. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 165

Tribunal File Number: AD-16-413

BETWEEN:

R. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Pierre Lafontaine

DECISION DATE March 29, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On November 25, 2015, the Tribunal's General Division found that the Appellant had abandoned his appeal.

[3] On March 10, 2016, the Appellant filed an application for leave to appeal before the Appeal Division after receiving the decision on February 26, 2016.

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] The Tribunal finds that the Applicant filed his application within the prescribed time. In light of the above-mentioned circumstances, namely his incarceration and the lack of follow-through from the person assigned with keeping his affairs in order, the Tribunal finds that even though the application should be considered late, it would be in the interest of justice to grant an extension of time for filing the Applicant's application for leave to appeal with no prejudice to the Respondent – *X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

[9] 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.

[10] The Tribunal will grant leave to appeal if the Applicant shows that any of the above grounds of appeal has a reasonable chance of success.

[11] 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.

[12] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[13] The Applicant, in his application for leave to appeal, states that he was not notified of the hearing date before the General Division and that he did not get the opportunity to be heard.

[14] The Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question of natural justice, the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division