



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *F. G. v. Canada Employment Insurance Commission*, 2016 SSTADEI 173

Tribunal File Number: AD-16-453

BETWEEN:

F. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY:: Pierre Lafontaine

DECISION DATE April 1, 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 16, 2016, 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 justified.

[3] On March 18, 2016, the Applicant filed an application for leave to appeal before the Appeal Division after receiving the General Division's decision on February 22, 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] 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] In his application for leave to appeal, the Applicant states that the General Division erred in its application of the provisions regarding unemployment status, specifically when it found that the time the Applicant devoted to job searching was time devoted to his business. He also submits that an unprofitable business could not be a claimant's main

source of livelihood. He cites paragraphs 58(1)(a), (b) and (c) of the *Department of Employment and Social Development Act*.

[13] 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 raised a question, the response to which might justify setting aside the decision under review.

CONCLUSION

[14] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division