Citation: *Canada Employment Insurance Commission v. A. B.,* 2016 SSTADEI 195

Tribunal File Number: AD-16-470

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

A. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY::   Pierre Lafontaine

DECISION DATE   April 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 25, 2016, the Tribunal's General Division found that:

-   Imposing a penalty under section 38 of the Act was not justified.

-   The issuance of a notice of violation was not justified under section 7.1 of the Act.

[3]   The Applicant filed an application for leave to appeal to the Appeal Division on March 24, 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 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 its 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 its application for leave to appeal, the Applicant submits that the General Division did not apply the proper legal test for penalty. It states that the General

Division erred in its interpretation of the term knowingly, which constitutes an error of law.

[13]   The Applicant also submits that the Respondent's arguments were inconsistent, but that the General Division failed to take these contradictions into account. The General Division also allegedly failed to explain why it was rejecting the Applicant's submissions. The Applicant submits that it is the General Division's duty to take all the evidence into account—not just the evidence that favours the Respondent's position—and that this constitutes an error in law.

[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 raised a question, the response to which could lead to the setting aside 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