



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. L. D.*, 2016 SSTADEI 196

Tribunal File Number: AD-16-473

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

L. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY:: Pierre Lafontaine

DATE OF DECISION 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 March 9, 2016, the Tribunal's General Division found that:

- As a teacher, section 33 of the *Employment Insurance Regulations* (Regulations) does not apply to the Respondent during the non-teaching periods of December 21, 2014, to January 3, 2015, and March 1, 2015, to March 7, 2015.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 29, 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] In its application for leave to appeal, the Applicant submits that the General Division erred in interpreting and applying paragraph 33(2)(b) of the Regulations.

[11] Specifically, the Applicant submits that, contrary to the General Division's conclusion, the Respondent did not meet the exception set out in paragraph 33(2)(b) of the Regulations because the evidence on file shows that for the 2014-2015 school year, the Respondent had a continuing contract at 20%.

[12] The Applicant submits that the Federal Court of Appeal has stated that teachers employed on a continual basis and for a predetermined term cannot be considered casuals or substitutes.

[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 has raised a question relating to the General Division's interpretation and application of paragraph 33(2)(b) of the Regulations, the answer to which may lead to the setting aside of the decision challenged.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division