



[TRANSLATION]

Citation: *R. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 289

Tribunal File Number: AD-16-502

BETWEEN:

R. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 31, 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:

- The Applicant's earnings from his business had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On April 4, 2016, the Applicant filed an application for leave to appeal before the Appeal Division after having received the General Division's decision on March 5, 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 submits, in particular, that:

- a) The General Division erred in its conclusion because the Respondent had acknowledged the Applicant as an employee, and the evidence shows that he was merely an investor in the business.
- b) The General Division erred in law by submitting that an error in the wording of the Respondent's decision must be passed on to the Applicant.

- c) The onus is on the Respondent to correctly render decisions using the right wording. Given that it is supposed to be a social law, case law has established that a decision must never disadvantage the claimant if it stems from the Respondent's error or from an ambiguity in the law or its regulations.
- d) The General Division erred in both fact and law when it decided on elements which it had not witnessed, and particularly when it shifted the blame to the Applicant. In fact, the General Division's role is to render a decision based on the evidence before it; not based on its own view of events to which it had not been witness. Contrary to what is stated in the decision, the Applicant has always been careful to provide any information required.

[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. This is an issue relating to the interpretation and application of sections 35 and 36 of the Regulations. The Applicant raised a question to which the response may justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division