



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *K. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 292

Tribunal File Number: AD-16-503

BETWEEN:

K. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 3, 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 29, 2016, the Tribunal's General Division held that the imposition of a penalty under section 38 of the *Employment Insurance Act* ("the EI Act") for committing an error or omission by knowingly making false or misleading statements or representations was justified.

[3] The Applicant filed an application for leave to appeal before the Appeal Division on April 4, 2016, after receiving the decision on March 7, 2016.

ISSUES

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* ("the DESD Act") provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal."

[6] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

ANALYSIS

[7] Subsection 58(1) of the DESD Act provides that the only grounds of appeal are the following:

- (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, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision 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 application for leave to appeal is a preliminary step. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on 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 the Applicant has shown that at least one of the aforementioned 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 Act, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice, the response to which 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] The Applicant contends in his application for leave to appeal that the General Division erred by failing to take into account the attitude of the Respondent's representatives during the investigations. He adds that the General Division should at least have considered the information reported by the Appellant and his representative, which is essential to an analysis of the credibility of the Respondent's evidence.

[13] He claims that the General Division's decision in no way reflects the Applicant's testimony or his representative's submissions.

[14] He also contends that the General Division erred in its application of the Federal Court of Appeal's decision in *Lévesque* (A-557-96) concerning initial, spontaneous

statements made by interested persons before the Respondent's decision was made since the Applicant never had the opportunity to speak freely with an agent.

[15] He claims that it is an error on the part of the General Division to refuse to accept evidence filed at a hearing to analyze and especially to judge the credibility of the parties in order to render its decision. He contends that the General Division must rule on the facts as a whole, and, if it rejects part of the testimony given, it must state its reasons. He argues that the General Division's decision as a whole contains errors of fact and of law and that it is not written in a manner consistent with the evidence submitted at the hearing.

[16] Lastly, he contends that the General Division erred in imposing a penalty on him because he thought he was in good standing and had no reason to know that there was any irregularity in his file. He notes that a penalty may not be imposed unless the claimant is aware that the information he gives us false.

[17] 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 Claimant raised several questions of fact and/or of law the answers to which may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division