



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. M. L.*, 2016 SSTADEI 340

Tribunal File Number: AD-16-835

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

M. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 24, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On May 11, 2016, the Tribunal's General Division held that the Applicant's claim for Employment Insurance ("EI") benefits on May 25, 2014, could be cancelled and that the EI claim could be antedated to January 1, 2015.

[3] The Applicant filed an application for leave to appeal before the Appeal Division on June 2, 2016.

ISSUE

[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 states 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] 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 DESD 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] The Appellant claims in its application for leave to appeal that the evidence in the file shows that the Respondent filed a claim for benefits on June 18, 2015, and asked that it be antedated to January 4, 2015. The Respondent had accumulated only 15 hours of

insurable employment during her qualifying period between May 25, 2014, and January 3, 2015, whereas a minimum of 595 hours was required for her to qualify for regular benefits and 600 hours for special benefits.

[13] The Applicant claims that the General Division erred in applying subsection 10(4) of the *Employment Insurance Act* (“the Act”), which provides, *inter alia*, that an initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day. The Applicant claims that the Respondent did not prove that she qualified on January 4.

[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 concerning the General Division’s interpretation and application of subsection 10(4) of the Act the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division