



[TRANSLATION]

Citation: *D. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 344

Tribunal File Number: AD-16-847

BETWEEN:

D. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

9170-1292 Québec Inc.

Added party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 28, 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 18, 2016, the General Division held as follows:

- the Applicant was disentitled from receiving employment insurance benefits from June 28 to July 20, 2015, as a result of a period of leave from his employment without just cause; and
- the Applicant was disqualified from receiving employment insurance benefits as of July 25, 2015, because he voluntarily left his employment.

[3] On June 22, 2016, the Applicant filed an application for leave to appeal before the Appeal Division. He was informed of the decision on May 25, 2016.

ISSUE

[4] The Tribunal must decide 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 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 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 Applicant claims in his application for leave to appeal that the General Division erred in ruling on issues that were not before it and after apparently finding that there had been no misconduct.

[13] The Applicant submits that, in the absence of a reconsideration decision on any voluntary leaving and/or leave from employment without just cause, the General Division could not render a decision on those points without exceeding its jurisdiction. He contends that he was entitled to know in advance the issues to be addressed before the General Division so that he could make full answer and defence. The Applicant submits that, for that reason, he was denied a fair hearing before the General Division.

[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 raises questions of jurisdiction and natural justice the answers of which could result in the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division