



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. Z. v. Canada Employment Insurance Commission*, 2016 SSTADEI 406

Tribunal File Number: AD-16-966

BETWEEN:

**R. Z.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 10, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On June 20, 2016, the General Division of the Tribunal determined that:

- The Applicant had failed to prove his availability for work pursuant to sections 18 and 50 of the *Employment Insurance Act (Act)* and section 9.001 of the *Employment Insurance Regulations (Regulations)*.

[3] The Applicant requested leave to appeal to the Appeal Division on July 26, 2016 after receiving communication of the decision of the General Division on June 27, 2016.

### **ISSUE**

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

### **THE LAW**

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act (DESD Act)*, “an 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 *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] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant, in his application for leave, states that the General Division erroneously relied on his statement of September 8, 2015 in which he stated that he was not looking for work. This statement was made during the time he was in receipt of sickness benefits.

[10] Furthermore, the Applicant pleads that the General Division ignored his testimony under oath that he was able to perform full-time work that is consistent with his physical restrictions, and that he was looking for such work when he was deemed ineligible for employment insurance benefits.

[11] The Applicant submits that the General Division further erred by failing to take his work experience, injury and medical information into account when assessing suitability and availability.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

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

*Pierre Lafontaine*  
Member, Appeal Division