



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. S. F.*, 2016 SSTADEI 426

Tribunal File Number: AD-16-1002

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

S. F.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 18, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On July 28, 2016, the Tribunal's General Division found that the Respondent's request for reconsideration had been filed within thirty (30) days of receiving the Applicant's decision, in accordance with subsection 112(1) of the *Employment Insurance Act* (Act).

[3] On August 11, 2016, the Applicant filed an application for leave to appeal to the Appeal Division.

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 Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The Board of Referees 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 their 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] The Applicant submits that the General Division erred in law and acted beyond its jurisdiction when it granted the Respondent's appeal without determining whether the Applicant had exercised its discretion judicially when it refused to extend the period for reconsideration pursuant to section 112 of the Act.

[13] The Applicant argues that the authority to extend the reconsideration period is a discretionary authority granted to the Applicant. It states that the Tribunal may intervene only when it determines that the Applicant had exercised its discretionary authority in a non-

judicial manner. It argues that the General Division could not, as it did in this case, simply substitute its discretion for that of the Applicant.

[14] The Applicant finally states that the General Division erred in law when it disregarded the legal test established by case law to determine if the Tribunal may intervene in how the Applicant exercises its discretionary authority.

[15] 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 is raising a question relating the General Division's jurisdiction, the answer to which could lead to the setting aside of the contested decision.

CONCLUSION

[16] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division