



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 573

Tribunal File Number: AD-16-1291

BETWEEN:

M. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to appeal decision by: Pierre Lafontaine

Decision date: December 20, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 14, 2016, the Tribunal's General Division held that disentitlement could be imposed for failing to provide medical evidence under subsection 40(1) of the *Employment Insurance Regulations*.

[3] The Applicant filed an application for leave to appeal before the Appeal Division on November 16, 2016, after the General Division's decision was communicated to him on October 21, 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* 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 *Department of Employment and Social Development 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] 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 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 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 the answer to which may 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] In his application for leave to appeal the Applicant asserts that, after he had used up all of the sick days he had accumulated with his employer, the employer had no other work for him. The employer therefore gave him the record of employment needed to obtain employment insurance sickness benefits. When he submitted his application, the Respondent advised him that he would have to have a medical certificate that he would have to produce upon request.

[13] He argues that the Respondent never made any such request. The medical certificates indicate that he should not work on the evening shift, for a variety of reasons. However, the employer cannot accommodate him because there is no daytime work available. When his sickness benefits ran out (after 15 weeks), he applied for regular benefits, which were

refused because he was not available for work, an assertion he maintains is false. He argues that the Respondent does not consider him to be sick while at the same time saying he is not available for work: assertions that are contradictory.

[14] The Applicant essentially maintains that 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.

[15] After reviewing 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 case raises a question of fact and law the answer to which may justify setting aside the decision under review.

CONCLUSION

[16] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Decision