



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 574

Tribunal File Number: AD-16-1360

BETWEEN:

S. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of decision: 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 November 12, 2016, the Tribunal's General Division found as follows:

- The Respondent had properly exercised its discretion when it refused to grant an extension of time for applying for a review of the decision of September 25, 2014, under section 112 of the *Employment Insurance Act (Act)*.

[3] The Applicant filed an application for leave to appeal before the Appeal Division on December 9, 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 “[a]n 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 “[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 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 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.

[13] The Tribunal has reviewed the file. In his notice of appeal to the General Division, the Applicant argues that he was within the prescribed time for obtaining a review of the Respondent's decision. He admits that he received the decision of September 25, 2014, and notes that he sent the Respondent explanatory letters with attachments in October 2014. The Respondent acknowledges having received the Applicant's letters of October 15 and 23, 2014, a time that seems to be within the 30-day period set out in the *Act*.

[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 case raises a question concerning the General Division's interpretation and application of section 112 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