



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. K. L.*, 2017 SSTADEI 69

Tribunal File Number: AD-17-138

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

K. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 17, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 30, 2017, the General Division of the Tribunal determined that the 30 day period to make a request for reconsideration pursuant to section 112 of the *Employment Insurance Act* (Act) and section 1 of the *Reconsideration Request Regulations* (RR Regulations) should be extended. The Applicant requested leave to appeal to the Appeal Division on February 10, 2017.

ISSUE

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

THE LAW

[4] 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”.

[5] 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

[6] 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.

[7] 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.

[8] The Applicant, in its application for leave, submits that the General Division erred in law, misinterpreted subsection 1(1) b) of the RR Regulations and substituted its discretion to the Applicant's. All the factors stated by the General Division were already considered and the Applicant ultimately exercised its discretionary authority judicially. The Applicant pleads that based on the case law and the evidence before it, the General Division erred when it accepted the delay while recognizing that the Respondent was aware of the unfavorable decisions since 2011 .

[9] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its 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

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

Pierre Lafontaine

Member, Appeal Division