



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. P. B.*, 2017 SSTADEI 65

Tribunal File Number: AD-17-134

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

P. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 16, 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 25, 2017, the General Division of the Tribunal concluded that an indefinite disqualification had no basis in sections 29 and 30 of the *Employment Insurance Act*.

[3] The Appellant filed an application for leave to appeal to the Appeal Division on February 10, 2017.

ISSUE

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

THE LAW

[5] As provided for in 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 states that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

ANALYSIS

[7] The only possible grounds of appeal as set out in subsection 58(1) of the DESD Act are as follows:

- 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] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is an initial 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 leave stage, the Applicant does not have to prove the 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] To do so, the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be able to see a question of law, fact or jurisdiction, the answer to which may lead to the setting aside of the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In its application for leave to appeal, the Applicant submits that the General Division overstepped its jurisdiction and that it erred in law by rendering a decision on the Respondent's voluntarily leaving when the appeal decision pertained to his availability.

[13] After reviewing the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal determines that the appeal has a reasonable chance of success. The Applicant has raised an issue of jurisdiction, the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[14] Leave to appeal is granted.

Pierre Lafontaine
Member, Appeal Division