



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *I. K. v. Canada Employment Insurance Commission*, 2017 SSTADEI 102

Tribunal File Number: AD-17-115

BETWEEN:

I. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 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 27, 2017, the General Division of the Tribunal determined that a disentitlement had been imposed in accordance with section 18 of the *Employment Insurance Act* because the Applicant had not proven that he was available for work.

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on February 2, 2017.

ISSUE

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

THE LAW

[5] 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.”

[6] Subsection 58(2) of the DESD 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] 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.

[8] Regarding the application for leave to appeal, the Tribunal needs to be satisfied that the grounds for appeal fall within any of the abovementioned grounds of appeal.

Furthermore, before leave can be granted, the Tribunal also needs to be satisfied that at least one of the grounds has a reasonable chance of success.

[9] In his application for leave to appeal, the Applicant submits that the General Division ignored his evidence in rendering its decision. He is contesting the interpretation and application of the availability legal test by the General Division. He also states that he did not receive the full appeal docket prior to the hearing before the General Division.

[10] After reviewing the appeal docket and the decision of the General Division, and after considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division