



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. R. C.*, 2017 SSTADEI 132

Tribunal File Number: AD-17-240

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

R. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 29, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On February 28, 2017, the Tribunal's General Division found that the Respondent was eligible to receive benefits within the meaning of section 18 and subsections 50(1) and 50(8) of the *Employment Insurance Act* (Act) and section 9.001 of the *Employment Insurance Regulations*.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 17, 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] According to subsection 58(1) of the DESD Act, 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] The application for leave to appeal 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 to appeal stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be in a position to determine 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 its application for leave to appeal, the Applicant states that the General Division exceeded its jurisdiction in finding that the benefit period should be established on May 22, 2016, rather than July 5, 2015, given that that issue was not before the General Division for determination. It states that the General Division also erred in law given that the Respondent had not accumulated the number of insurable hours that sections 7 and 8 of the Act require in order to establish a benefit period as of May 22, 2016.

[13] The Applicant states that the General Division failed to address the disentitlement period that was actually at issue, that is, July 6, 2015, to July 15, 2016.

[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 Applicant has raised a question the answer to which may justify setting aside the decision under review.

CONCLUSION

[15] The Tribunal grants leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division