[TRANSLATION]

Citation: *A. P. v. Canada Employment Insurance Commission,* 2017 SSTADEI 150

Tribunal File Number: AD-17-163

BETWEEN:

A. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 7, 2017

<div align="center">**REASONS AND DECISION**</div>

DECISION

[1]   The Social Security Tribunal of Canada (Tribunal) refuses leave to appeal to the Tribunal.

INTRODUCTION

[2]   On January 20, 2017, the Tribunal's General division found that:

- Imposing a disentitlement to Employment Insurance benefits on the Applicant was justified because he had failed to show that he was unemployed under the terms of sections 9 and 11 of the *Employment Insurance Act* (Act), and section 30 of the *Employment Insurance Regulations* (Regulations).

- Imposing a disentitlement to Employment Insurance benefits on the Applicant was justified under paragraph 18(1)(*a*) of the Act because he was not available to work.

- Imposing a penalty on the Applicant was justified, pursuant to section 38 of the Act, for having committed an act or omission by knowingly making false or misleading statements.

[3]   The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on February 21, 2017, after having received the General Division's decision on January 23, 2017.

ISSUE

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

THE LAW

[5]   In accordance with subsection 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]   Under subsection 58(2) of the DESD Act, "Leave 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 that:

   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 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-mentioned 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 justify setting aside the decision under review.

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

[12]   On February 21, 2017, the Applicant filed an application for leave to appeal.

[13]   On March 6, 2017, the Tribunal sent a letter to the Applicant so that he could explain in detail his grounds for appealing the General Division's decision. The Applicant was then informed that it was insufficient to merely repeat his version of events that he had presented to the General Division.

[14]   In response to the Tribunal's request, the Applicant alleged that the General Division had based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[15]   The Applicant specified that, as it appears in paragraphs 15 a), b), c), d), e) and f) of the ruling, he had not been a self-employed worker, executive or employer between February 7 and June 2, 2014. He argued that he had been a financial stakeholder not involved in his brother's company. He wanted to submit a copy of the resolutions showing that he had not been involved in his brother's business on the dates in question.

[16]   The Tribunal notes that paragraphs 15 a), b), c), d), e) and f) of the decision to which the Applicant was referring represent a repetition of the facts that the Applicant submitted to the General Division. Nevertheless, the General Division did consider the facts submitted by the Applicant, and it did not lend credence to his testimony.

[17]   Despite the Tribunal's request to provide detailed grounds of appeal, in accordance with subsection 58(1) of the DESD Act, all the Applicant did was repeat his version of events that he had already submitted to the General Division.

[18]   It seems clear to the Tribunal, after reviewing the application for leave to appeal and the General Division's decision, that the Applicant wants the Appeal Division to reweigh the evidence that was presented before the General Division.

[19]   However, the Appeal Division's powers are limited. The Appeal Division is not authorized to retry the factual issues, re-weigh the evidence or redo what the General Division did. In other words, the appeal before the Appeal Division is not subject to a *de novo* hearing—a hearing where a party may present their evidence again and hope for a favourable decision.

[20]   After reviewing the appeal file, the General Division's decision and the Applicant's arguments in support of his application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant raises no issue of jurisdiction, fact or law, under subsection 58(1) of the DESD Act, the answer to which could justify setting aside the decision under review.

CONCLUSION

[21]   The Tribunal refuses the application for leave to appeal.

Pierre Lafontaine

Member, Appeal Division