



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 266

Tribunal File Number: AD-17-490

BETWEEN:

R. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 12, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 5, 2017, the General Division granted an adjournment of a pre-hearing teleconference because the Respondent's legal representative was unavailable on the original date of the pre-hearing.

[3] The Applicant requested leave to appeal to the Appeal Division on May 19, 2017, after having received the General Division decision on April 12, 2017.

[4] No final decision has been rendered by the General Division on the principal issue regarding the Respondent's decision to deny Employment Insurance benefits pursuant to sections 48, 49 and 50 of the *Employment Insurance Act*.

ISSUES

[5] The Tribunal must decide whether it will grant the late application and whether the appeal has a reasonable chance of success.

THE LAW

[6] 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."

[7] 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

[8] 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.

[9] In the interest of justice, the Tribunal grants the Applicant an extension of time to file his application for leave to appeal without prejudice to the Respondent—*X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[10] Regarding the application for leave to appeal, before leave to appeal can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the abovementioned grounds of appeal, and that at least one of the reasons has a reasonable chance of success.

[11] The Applicant argues that the General Division should not have allowed the Respondent's representative to request an adjournment since she had neglected to use the proper form and because she had not supplied the required information to make such a request to the Tribunal. Furthermore, the Applicant submits that the General Division did not consider his arguments against the adjournment request, and that it proceeded to grant it without any giving reasons. He argues that this is inconsistent with the principles of natural justice.

[12] The Tribunal notes that the decision under appeal is an interlocutory decision. The Courts have repeatedly stated (such as in *Szczecka v. Canada (Minister of Employment and*

Immigration), 1993 CanLII 9425 (FCA)) that there should be no appeal or immediate judicial review of an interlocutory decision except in exceptional circumstances.

[13] In other words, unless there are exceptional circumstances, there shall be no appeal of an interlocutory decision when other possible recourses exist following the General Division's final decision.

[14] The Tribunal finds that the Applicant did not identify any exceptional circumstances in his application for leave to appeal.

[15] Given the above, the Tribunal finds that the application for leave to appeal has no reasonable chance of success and that it must be refused.

CONCLUSION

[16] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine

Member, Appeal Division