



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 281

Tribunal File Number: AD-17-514

BETWEEN:

S. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 25, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On June 9, 2017, the Tribunal's General Division found that, given that the Applicant had not demonstrated good cause for the entire period of the delay, her claim could not be antedated under subsection 10(5) of the *Employment Insurance Act* (Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on July 13, 2017, after receiving the General Division's decision dated June 19, 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] An 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 any 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 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] The Applicant submitted that the General Division erred in its interpretation of what a reasonable person should have done in the circumstances produced in evidence before it.

[13] She argues that the General Division erred by expecting that a reasonable person receiving false information, which is seems reasonably credible, from an agent of the Respondent's should constantly be questioning the accuracy of this information. She

maintains that a reasonable person is not someone who is paranoid and who anxiously doubts or disbelieves information received from an authority to the point of seeking to verify that information again and again, daily or periodically, lest it be erroneous.

[14] She also maintains that the General Division's findings are contradictory, unfounded, and made without regard for the material before it.

[15] 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 number of questions of fact and law, the answers to which may lead to the setting aside of the contested decision.

CONCLUSION

[16] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division