[TRANSLATION]

Citation: *R. R. v. Canada Employment Insurance Commission,* 2017 SSTADEI 282

Tribunal File Number: AD-17-518

BETWEEN:

R. R.

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

Canada

<div style="text-align: center;">**REASONS AND DECISION**</div>

DECISION

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

INTRODUCTION

[2]   On June 7, 2017, the Tribunal's General Division found that the Respondent had correctly applied the provisions of paragraph 55(1)(*f*) of the *Employment Insurance Regulations*, which allows for claimants to be outside Canada for a period of not more than 14 consecutive days to conduct a *bona fide* job search and not lose their entitlement to benefits.

[3]   The Applicant filed an application for leave to appeal to the Appeal Division on July 18, 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 states 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 at least one of the above-mentioned 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 argues that the General Division erred in law by stating that exemption to the disentitlement applies as of the start of the trip abroad and ends on the last day of the 14-consecutive-day period.

[13]   The Applicant argues that the period in which she is exempt from disentitlement cannot start during the period in which her earnings were allocated. During this period, the

Applicant is not entitled to benefits and therefore is not required to seek or be available for employment, in accordance with section 18 of the *Employment Insurance Act*. Logic dictates that the period of exemption from disentitlement coincide with the start of the waiting period, once the Applicant qualifies for benefits.

[14]   Upon review of the appeal file, the General Division's decision, and the Applicant's arguments in support of her application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised an issue of law, the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[15]   Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division