



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 287

Tribunal File Number: AD-17-489

BETWEEN:

E. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 1, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On June 26, 2017, Tribunal's General Division found that the disentitlement imposed pursuant to sections 9 and 11 of the *Employment Insurance Act* (Act) and section 31 of the *Employment Insurance Regulations* (Regulations) was justified.

ISSUE

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

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development* (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."

[5] 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

[6] According to subsection 58(1) of 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.

[7] 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 application for leave to appeal stage, the Applicant does not have to prove his or her case.

[8] 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.

[9] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, 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.

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

[11] The Applicant argues in his application for leave to appeal that the General Division erred in its application of the provisions pertaining to the state of unemployment, because it did not account for the material before it, particularly, the Applicant's job searching. He submits that if the General Division had accounted for his evidence, it would have found that his union activities were secondary.

[12] After reviewing the appeal docket, 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 a reasonable chance of success. The Applicant has raised a question the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[13] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division