



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 310

Tribunal File Number: AD-17-550

BETWEEN:

**R. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 28, 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 23, 2017, the Tribunal's General Division found that the disentitlement imposed on the Applicant from June 28, 2015, to June 19, 2016, was justified pursuant to sections 9 and 11 of the *Employment Insurance Act* (Act) and section 30 of the *Employment Insurance Regulations* (Regulations), because the Applicant had not proven his state of unemployment.

[3] On August 2, 2017, the Applicant filed an application for leave to appeal before the Appeal Division after receiving the General Division's decision on July 6, 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* (the 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 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] 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.

[9] The Tribunal will grant leave to appeal if the Applicant shows that at least one of the above grounds of appeal has a reasonable chance of success.

[10] 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 might lead to the setting aside of the decision under review.

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

[12] In support of his application for leave to appeal, the Applicant argues that the General Division 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.

[13] He argues that he was actually unemployed as of June 23, 2015. He complains that the General Division did not account for his availability and his efforts to find a job as of June 2015, when he was without an income from his business during the relevant period.

[14] Upon review of the appeal docket, 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 several questions of fact and law concerning the General Division's interpretation and application of sections 9 and 11 of the Act and section 30 of the Regulations, the answers to which might lead to the setting aside of the decision under review.

## **CONCLUSION**

[15] The Tribunal grants leave to appeal before the Tribunal's Appeal Division.

Pierre Lafontaine

Member, Appeal Division