



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 308

Tribunal File Number: AD-17-398

BETWEEN:

**B. L.**

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 25, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On April 12, 2017, the General Division of the Tribunal determined that the Applicant had failed to prove he had weeks of unemployment pursuant to subsection 11(4) of the *Employment Insurance Act* (Act) and that his antedate request pursuant to subsection 10(4) of the Act was to be denied.

[3] The Applicant requested leave to appeal to the Appeal Division on May 16, 2017. The Applicant is deemed to have received the General Division decision on April 21, 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] 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.

[8] Before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[9] The Applicant attended the teleconference hearing before the General Division.

[10] After considering the evidence, including the oral testimony of the Applicant, the General Division found that the Applicant had failed to prove he had weeks of unemployment pursuant to subsection 11(4) of the Act and that the Applicant had failed to meet his burden to prove that he acted as a reasonable and prudent person would have in similar circumstances throughout the entire period of the delay in filing his claim.

[11] In his initial application for leave to appeal, the Applicant basically reiterates the facts that he had submitted to the General Division for review and consideration.

[12] The Tribunal proceeded to send a letter to the Applicant on May 18, 2017, requesting that he explain his grounds of appeal with a deadline of June 19, 2017. The Applicant replied on June 20, 2017.

[13] In his reply, the Applicant states that all he wants is the money that he is entitled to. The Respondent did not want to pay him when he was at home, out of work and looking for work. He could not file his reports for these weeks because he could not reach the Respondent by phone. However, he was told that he should have gone to the Respondent's office in Gander.

[14] The Tribunal sent a second letter to the Applicant on July 11, 2017, requesting that he submit his grounds of appeal by August 10, 2017, and that he explain why his appeal had a reasonable chance of success. The Applicant was then informed that it was not sufficient to simply repeat what was said before the General Division. No answer to this letter has yet been received by the Tribunal.

[15] The Tribunal finds that the Applicant has neither identified any errors of jurisdiction or law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

[16] The Federal Court of Appeal has on several occasions confirmed the principle according to which claimants who have a schedule that includes periods of work and of leave are deemed to be employed during the leave periods that are part of this established schedule: *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Canada (Attorney General) v. Merrigan*, 2004 FCA 253; *Canada (Attorney General) v. Duguay*, A-75-95. Furthermore, as concluded by the General Division, the Applicant did not take reasonable steps to understand his entitlements to benefits and obligations under the Act.

[17] For the above-mentioned reasons and after reviewing the appeal docket and the General Division decision, and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division