



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *P. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 323

Tribunal File Number: AD-17-608

BETWEEN:

P. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 26, 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 August 11, 2017, the Tribunal's General Division found that the disenfranchisement imposed pursuant to paragraph 18(1)(a) of the *Employment Insurance Act* (Act) was justified, since the Applicant had not proven his availability for work.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on September 5, 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 DESD Act, the following are the only grounds of appeal:

- 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 it is satisfied 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 justify setting aside the decision under review.

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

[12] The Applicant submits that the General Division erred in law in making its decision. He also argues that it based its decision on an erroneous finding of fact made without regard for the material before it. He submits that his goal was always to find employment. Instead of staying home waiting for a possible employer to call, he registered for a training that would offer him more employment opportunities.

[13] The Applicant argues that he was able to leave the training to work and resume the training where he left off, which he did twice. He sent his resume to several employers and searched for jobs on various employment websites. He attended a job search workshop with the goal of finding employment. He also met with available employers and spoke on the telephone with others, but again without success. He doubted that Parliament intended to unjustly deprive a worker who met all the criteria under the Act simply because he was undergoing training.

[14] 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 question regarding the General Division's interpretation and application of the criteria in *Faucher*, (A-56-96), the answer to which might justify setting aside the decision under review.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division