



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v. Canada Employment Insurance Commission*, 2018 SST 275

Tribunal File Number: AD-18-143

BETWEEN:

M. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 26, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal grants leave to appeal to the Appeal Division.

INTRODUCTION

[2] On February 7, 2018, the General Division of the Tribunal determined that the Respondent was justified in imposing the following on the Applicant:

- a) a disentitlement pursuant to sections 9 and 11 of the *Employment Insurance Act* (Act) and section 30 of the *Employment Insurance Regulations* (Regulations) for failing to prove he was unemployed; and
- b) a non-monetary warning penalty pursuant to section 38 of the Act for making a misrepresentation by knowingly providing false or misleading information to the Respondent.

[3] The Applicant requested leave to appeal to the Appeal Division on March 2, 2018.

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] With regard to the application for leave to appeal, 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 submits that he has grounds of appeal pursuant to paragraphs 58(1) (b) (c) of the DESD Act. He argues that the General Division erred in law in the application of sections 9 and 11 of the Act and section 30 of the Regulations. He also submits that 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 and cites examples supporting his position.

[10] After reviewing the appeal docket and the General Division decision and considering the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[11] The Applicant has set out reasons that fall into the above-enumerated grounds of appeal and that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[12] The Tribunal grants leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division