



Tribunal de la sécurité
sociale du Canada

Social Security
Tribunal of Canada

[TRANSLATION]

Citation: *J. B. v. Canada Employment Insurance Commission*, 2018 SST 279

Tribunal File Number: AD-17-851

BETWEEN:

J. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of decision: March 27, 2018

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] On October 6, 2017, the Tribunal's General Division concluded that a disentitlement imposed under sections 9 and 11 of the *Employment Insurance Act* (EI Act) and section 30 of the *Employment Insurance Regulations* (EI Regulations) was justified because the Applicant had failed to prove that he was unemployed.

[3] The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on October 31, 2017.

ISSUE

[4] The Tribunal must determine 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 be brought only 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 only grounds of appeal are as follows:

- 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; and
- 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 leave to appeal stage, the applicant does not have to prove the case.

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

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be in a position to determine whether there is a question of law, fact or jurisdiction whose answer may justify setting aside the decision under review.

[11] In light of the above, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant requests leave to appeal pursuant to paragraph 58(1)(c) of the DESD Act. He argues 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. To support his claim, he argues that the General Division relied on judgements without factual basis on many occasions, without regard for the material before it, in its analysis of the six factors in the EI Regulations. He argues that the General Division refused to look at the facts objectively, and that most of the arguments supporting the decision are based on hypotheticals or [translation] "maybes."

[13] After reviewing 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 whose answer may lead to the setting aside of the decision under review.

CONCLUSION

[14] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division