



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. E. K.*, 2018 SST 613

Tribunal File Number: AD-18-105

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

E. K.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 28, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Canada Employment Insurance Commission declared E. K. (Claimant) disentitled to benefits for being outside Canada during the periods from July 14 to August 28, 2015, and from August 16 to 26, 2016, and for failing to prove his availability for work. The Claimant filed a request for reconsideration of the Commission's decisions, but the Commission upheld its initial decisions. The Claimant appealed to the Tribunal's General Division.

[3] The General Division concluded that the Claimant was entitled to benefits for the period from July 14, 2015, to August 3, 2015, because he proved his absence from Canada fell under one of the exceptions in the *Employment Insurance Regulations* (Regulations). It also determined that the Claimant had failed to prove that his absence from Canada during the periods from August 4 to 28, 2015, and from August 16 to 26, 2016, were for one of the reasons set out in the Regulations, and that he had failed to prove his availability for work.

[4] The Commission now seeks leave from the Tribunal to appeal the General Division's decision.

[5] In support of its application for leave to appeal, the Commission argued that the General Division erred in law in its interpretation of paragraph 55(1)(f) of the Regulations when it determined that the Claimant was entitled to benefits after July 28, 2015.

[6] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error based on which the appeal might have a reasonable chance of success.

[7] The Tribunal grants leave to appeal because the Claimant has raised at least one ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[8] Does the Commission's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Commission 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 Commission does not have to prove its case; it must instead establish that the appeal has a reasonable chance of success. In other words, it must show that there is arguably some reviewable error based on which the appeal might succeed.

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

[12] 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 an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

Issue: Does the Commission’s appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[13] In support of its application for leave to appeal, the Commission argued that the General Division erred in law in its interpretation of paragraph 55(1)(f) of the Regulations when it concluded that the Claimant was disentitled to benefits beyond July 28, 2015. Since the Claimant left the country on July 14, 2015, to look for jobs, the 14-day period mentioned in paragraph 55(1)(f) of the Regulations should start on July 15, 2015, and end on July 28, 2015, because the Regulations classify the days as consecutive.

[14] 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 Commission has raised an issue that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. M., for the Applicant
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