

Citation: *T. C. v. Canada Employment Insurance Commission*, 2015 SSTAD 42

Appeal No: AD-13-87

BETWEEN:

T. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: January 12, 2015

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (the “Tribunal”) for leave to appeal the decision of the Board of Referees (the “Board”) issued on May 16, 2013. The Board denied his appeal on whether or not his CPP pension income was properly allocated for the purposes of Regulations 35 and 36 of the *Employment Insurance Act*.

[2] The Applicant filed an application for leave to appeal (the “Application”) with the Appeal Division of the Tribunal on June 20, 2013. He had received the Board decision on May 21, 2013 and filed his Application within 30 days.

ISSUE

[3] In order to succeed on this application for leave, the Applicant must show that the appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Human Resources and Skills Development (DHRSD) 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”.

[5] Subsection 58(2) of the DHRSD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

SUBMISSION

[6] The Applicant submitted in support of the Application that:

- a) He asked for his CPP retirement pension to be applied retroactive to March 2, 2012 based on advice of the Commission’s agent;
- b) That agent did not tell him that pension payments received while he was receiving employment insurance sick benefits would be clawed back;

- c) The overpayment resulted from his request for retroactive CPP pension; and
- d) He did nothing wrong and the Commission needs to take responsibility for giving inaccurate information to him.

[7] The Applicant made the same arguments before the Board.

ANALYSIS

[8] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (i) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (ii) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (iii) 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.

[9] For our purposes, the decision of the Board is considered to be a decision of the General Division.

[10] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[11] The Board had considered the Applicant's submissions set out in paragraphs 6(a) to 6(d), above. I have read and carefully considered the Board's decision and the record. There is no suggestion by the Applicant that the Board failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Board may have made in a perverse or capricious

manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[12] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

CONCLUSION

[13] The Application is refused.

Shu-Tai Cheng

Member, Appeal Division