

[TRANSLATION]

Citation: *R. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 317

Appeal No.: AD-13-176

BETWEEN:

**R. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Application for Leave to Appeal**

---

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 9, 2015

## **DECISION**

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On February 27, 2013, a Board of Referees determined that the Applicant's earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations*. The Applicant attended and took part in the hearing. The Board of Referees considered the Applicant's evidence and arguments, and confirmed that he did not contest the amount of the overpayment or the calculation. He protested that he had been misinformed, that he only knew of an overpayment two years later in the process, and that he was being required to repay sums of money that he no longer had.

[3] The Applicant filed an application for leave to appeal with the Appeal Division on April 12, 2013. He explained that he filed his application more than 30 days after receiving the decision because [Translation] "my refusal from the Board of Referees gave me 60 days in which to appeal."

## **ISSUE**

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

## **THE LAW AND ANALYSIS**

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal".

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[7] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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] A decision of the Board of Referees is considered a decision of the General Division.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first and lower hurdle for the applicant to meet than that which must be met on the hearing of an appeal on the merits. The applicant at the leave stage does not have to prove his or her arguments.

[10] Indeed, the Tribunal will grant leave to appeal if the applicant shows that any one of the above-mentioned grounds of appeal has a reasonable chance of success.

[11] To this end, the Tribunal must be able to determine, under subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction, the answer to which may lead to the setting aside of the decision attacked.

[12] In his application for leave to appeal, the Applicant notes that

- (a) [Translation] "I am the victim of an inadequate procedure";
- (b) he reported for the purpose of paying back the EI but was misinformed by two Commission agents;

(c) he followed the agents' instructions and received no notice of overpayment during the years 2009-2010-2011; and

(d) he considers this way of doing things improper and unfair.

[13] It is not the function of a Member who is determining whether leave to appeal should be granted, to reassess and reweigh the evidence that was put before the Board of Referees. Based on my reading of the file and of the Board's decision, the grounds which the Applicant raised in his application for leave to appeal were already raised before the Board of Referees.

[14] Since the Applicant is not raising any of the grounds of appeal in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

## **CONCLUSION**

[15] The application for leave to appeal is refused.

*Shu-Tai Cheng*

Member, Appeal Division