

Citation: *Canada Employment Insurance Commission v. D. E.*, 2015 SSTAD 418

Appeal No. AD-14-494

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**D. E.**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal Decision**

---

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 26, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On August 27, 2014, the General Division of the Tribunal concluded that:

- The Applicant did not exercise its discretion in a judicial manner when it decided not to write-off all or part of an outstanding amount that the Respondent owed following an overpayment and therefore a partial write-off should be allowed.

[3] The Applicant requested leave to appeal to the Appeal Division on September 10, 2014.

## **ISSUE**

[4] The Tribunal must decide if 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* (the “*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 “leave 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] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal 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, before leave can be granted.

[9] The Applicant argues that the General Division exceeded its jurisdiction in making a decision with regard to the issue of write-off. The Applicant submits that the General Division relied wrongfully on the concurring judgment of Stratas J.A. in the FCA decision of *Steel* to give itself jurisdiction. The Applicant pleads that the concurring opinion of Stratas J.A. does not form part of the Court's judgement in *Zack Steel*, and unlike the constant jurisprudence on the issue of write-off, it is not a binding authority in this matter. Finally, the Applicant submits that it did not render a decision with respect to the Respondent's request for write-off for reasons of undue hardship under 56(1)(f) of the *Regulations*.

[10] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The interpretation and application by the General Division of the FCA *Steel* case raises several questions of jurisdiction, fact and law that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[11] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division