

Citation: *E. P. v. Canada Employment Insurance Commission*, 2015 SSTAD 444

Appeal No. AD-14-529

BETWEEN:

E. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Late Application and leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 30, 2015

DECISION

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

INTRODUCTION

[2] On April 3, 2014, the General Division of the Tribunal determined that:

- The allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the “*Regulations*”);
- A penalty was imposed in accordance with sections 38 of the *Employment Insurance Act* (the “*Act*”) for making a misrepresentation by knowingly providing false information to the Commission;
- A notice of violation was issued in accordance with section 7.1 of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on October 9, 2014.

ISSUES

[4] The Tribunal must decide if it will allow the late application and 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 late application for permission to appeal, the Applicant states that she never received the decision of the General Division. She has filed as exhibits several letters addressed to the Tribunal but no decision was sent to her. She pleads that she filed her appeal although it was rather difficult to appeal issues for which she had no documentation, no reference, nothing other than her memory of the Tribunal teleconference.

[9] The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file her application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[10] 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.

[11] The Applicant argues that the Member mentioned several times that she should have known to declare her earnings. She pleads that he kept re-phrasing the question and asking it over and over, until she realized that responding that she did not know was not the answer

the Member wanted to hear, and that he would not stop his badgering until she said what he wanted to hear - namely that she knowingly misrepresented her earnings.

[12] She submits that this teleconference is not something she will ever forget, it was that persistently abusive. She may not have known if she would be paid but she ought to have known and so on - it went on and on. She essentially argues that the General Division failed to respect a principle of natural justice.

[13] She is also appealing because she did not knowingly and purposely misrepresent her earnings. She made a truthful declaration at the time of filing the reports, according to her real and actual situation. She disputes the conclusion of the General Division on the issue of penalty since she had no subjective knowledge.

[14] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division