

Citation: *T. T. v. Canada Employment Insurance Commission*, 2015 SSTAD 479

Appeal No. AD-14-201

BETWEEN:

T. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: April 10, 2015

DECISION

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

INTRODUCTION

[2] On May 3, 2013, a panel of the board of referees determined that:

- The allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the “*Regulations*”);
- The imposition of a penalty was justified in accordance with section 38 of the *Employment Insurance Act* (the “*Act*”) for making a misrepresentation by knowingly providing false or misleading information to the Respondent;
- 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 May 13, 2013.

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] The Tribunal finds that the Applicant filed her application for permission to appeal within the legal delay of 30 days after receiving the decision of the board of referees.

[9] 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.

[10] The Applicant argues that she could not appear at the hearing because of medical reasons. She has filed a medical certificate in support of her claim. She wanted to explain her position at the hearing but the board of referees proceeded in her absence. She also argues that the board of referees erred in the calculation of her earnings since they are less than the earnings calculated by the Respondent. She has filed employer documents to support her position.

[11] The Tribunal also notices that the board of referees may not have applied the proper legal test regarding the issue of penalty.

[12] After reviewing the docket of appeal, the decision of the board of referees 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

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

Pierre Lafontaine

Member, Appeal Division