

Citation: *J. W. v. Canada Employment Insurance Commission*, 2015 SSTAD 482

Appeal No. AD-14-269

BETWEEN:

**J. W.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: April 14, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] On April 8, 2014, the General Division of the Tribunal determined that:

- The weekly benefit rate was calculated correctly as per section 14 of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on May 13, 2014.

## **ISSUES**

[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 she is seeking a ruling from the Canada Revenue Agency (CRA) on her insurable earnings. She has filed with the Tribunal her request for a CRA ruling. This ruling, she pleads, would impact the way her insurable earnings should be calculated on her Record of Employment. She submits that distributing her income over a year period and then not allowing her to claim 9 weeks as having income is unfair.

[10] 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**

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

*Pierre Lafontaine*

Member, Appeal Division