

**[TRANSLATION]**

**Citation: *S. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 717**

**Date: June 9, 2015**

**File number: AD-15-68**

**APPEAL DIVISION**

**Between:**

**S. S.**

**Applicant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Pierre Lafontaine, Member, Appeal Division**

## REASONS AND DECISION

### DECISION

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

### INTRODUCTION

[2] On January 19, 2015, the Tribunal's General Division found that:

- The Applicant's earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* ("the *Regulations*");
- The imposition of a penalty was justified under section 38 of the *Employment Insurance Act* ("the *Act*");
- The issuance of a notice of violation was justified under section 7.1 of the *Act*.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on February 13, 2015.

### ISSUE

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

### THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, "[a]n 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 *Department of Employment and Social Development Act* provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

## ANALYSIS

[7] Under 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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] 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 the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove his case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that any of the above grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In his application for leave to appeal, the Applicant submits that the General Division made a decision based on an incomplete file submitted by the Respondent. He argues that the General Division had to request particulars from the Respondent and send him a copy, which was not done. He submits that the decision does not refer to the

difference between the amounts received versus the amount he should have received, an argument raised at the hearing.

[13] The Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question of natural justice the answer to which may lead to the setting aside of the decision challenged.

## **CONCLUSION**

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

*Pierre Lafontaine*  
Member, Appeal Division