

[TRANSLATION]

**Citation: *J. L. v. Canada Employment Insurance Commission*, 2015 SSTAD 735**

**Date: June 12, 2015**

**File number: AD-15-162**

**APPEAL DIVISION**

**Between:**

**J. L.**

**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 February 28, 2015, the General Division found that:

- The weekly rate of benefits paid to the Applicant was consistent with the requirements of section 14 of the *Employment Insurance Act* (“the Act”);
- The Federal Court has sole jurisdiction to render a decision concerning a write-off.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on April 1, 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 her case.

[9] The Tribunal will grant leave to appeal if it is satisfied 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 natural justice, 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 her application for leave to appeal, the Applicant essentially argues that the General Division did not rule on her request to cancel the overpayment and that it therefore refused to exercise its jurisdiction.

[13] She submits that recent case law from 2013-2014 supports the position that it should now be within the jurisdiction of the Tribunal, and not only the Federal Court, to review a decision by the Commission concerning a write-off. She relies on *A. D. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 17, and *Bernatchez v. Attorney General of Canada*, 2013 FC 111.

[14] After reviewing the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question of jurisdiction the answer to which may lead to the setting aside of the decision challenged.

### **CONCLUSION**

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

*Pierre Lafontaine*  
Member, Appeal Division