

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. S. D.*, 2015 SSTAD 873

Date: July 13, 2015

File number: AD-15-45

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

S. D.

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 15, 2015, the Tribunal's General Division found that:

-After amendment, the Respondent's earnings were allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the Regulations).

[3] On February 5, 2015, the Applicant filed an application for leave to appeal to the Appeal Division. The Tribunal wants to point out that the General Division's decision concerns seventeen (17) claimants, but the Applicant is requesting leave to appeal just the Respondent's file (GE-14-1288).

ISSUE

[4] The Tribunal must decide whether 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*, "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 *Department of Employment and Social Development 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] In accordance with 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, 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] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is convinced that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

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

[12] In its application for leave to appeal, the Applicant maintains that the General Division erred by reducing the Respondent's overpayment and erred in applying section 13 and subsection 19(1) of the *Employment Insurance Act* (the Act).

[13] It argues that the General Division did not take into account the fact that the Respondent was not entitled to receive benefits until she had served a waiting period after her benefit period had begun pursuant to section 13 of the Act and that earnings during the waiting period had to be deducted pursuant to subsection 19(1) of the Act.

[14] Finally, it argues that the General Division based its decision on an erroneous finding of fact when it decided that the overpayment amount should be reduced for the week of November 4, 2012.

[15] After reviewing the appeal docket, the Board of Referees' decision and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised several questions of fact and law concerning the interpretation and application by the General Division of section 13 and subsection 19(1) of the Act and sections 35 and 36 of the Regulations whose responses might justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division