

**Citation: *P. D. v. Canada Employment Insurance Commission*, 2015 SSTAD 1080**

**Date: September 13, 2015**

**File number: AD-15-453**

**APPEAL DIVISION**

**Between:**

**P. D.**

**Applicant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

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

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On June 5, 2015, the General Division of the Tribunal determined that:

- The allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the “*Regulations*”).

[3] The Applicant requested leave to appeal to the Appeal Division on July 10, 2015, after receiving the General Division decision on June 15, 2015.

### **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] In his application for leave to appeal, the Applicant essentially repeats the arguments that he submitted to the General Division. He submits that his vacation pay was triggered by his request for a Record of Employment from his employer. Without the Record of Employment, his vacation pay would have been paid later. He pleads that it took him a year to accumulate the vacation pay and not two weeks and that it should not be allocated in a two week period. He submits that the Ontario disability program also made deductions because of his vacation pay.

[9] Unfortunately for the Applicant, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can represent evidence and hope for a new favorable outcome.

[10] The Applicant in his leave application has not identified any errors of jurisdiction or law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[11] After reviewing the appeal docket, the General Division decision and the arguments of the Applicant, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[12] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*  
Member, Appeal Division