

Citation: *C. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 1086

Date: September 13, 2015

File number: AD-15-426

APPEAL DIVISION

Between:

C. R.

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 May 15, 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*”);
- The Applicant was responsible for the repayment of benefits to which she was not entitled pursuant to sections 43 and 44 of the *Employment Insurance Act* (the “*Act*”).

[3] The Applicant requested leave to appeal to the Appeal Division on July 3, 2015, after receiving the General Division decision on June 10, 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 regards to the application for permission to appeal, the Tribunal needs to be satisfied 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 essentially submits that the Member misunderstood the issue before the Tribunal. The issue the Applicant put before the Tribunal in her materials and in her submissions was: Whether she received benefits for the week of January 16, 2011. The Applicant concedes that if the answer to this issue is in the affirmative, then because of the Applicant's concessions on the issue of allocation of earnings, she must pay those benefits back. However, she pleads, she did not receive benefits for the week of January 16, 2011, and that there was no evidence before the Member upon which she could conclude that she did receive benefits for the week of January 16, 2011 on the balance of probabilities. She further pleads that nowhere in the Tribunal decision does the Member consider her two declarations that she did not receive benefits for the week of January 16, 2011. She submits that the burden of proof was on the Respondent to prove their claim that the Applicant did receive benefits for the week of January 16, 2011, whereas the Respondent should have been held to the requirement of strict proof of the alleged debt.

[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