



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 33

Date: January 25, 2016

File number: AD-13-981

APPEAL DIVISION

Between:

R. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal refuses leave to appeal.

INTRODUCTION

[2] On June 17, 2013, a Board of Referees found that:

- The amounts the Appellant received from Air Canada constitute earnings under section 35 of the *Employment Insurance Regulations* (the Regulations) and must therefore, in accordance with subsection 36(9) of the Regulations, be allocated as of his termination of employment from Air Canada.

[3] The Applicant requested leave to appeal before the Appeal Division on July 22, 2013.

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* (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 Board of Referees failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) The Board of Referees 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 the Applicant shows that one of the above-mentioned 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 DESDA 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] The Tribunal finds that the Board of Referees had unanimously accepted the Applicant's appeal in this file.

[13] The Tribunal finds it difficult to understand why the Applicant would file an appeal considering he had won his case before the Board of Referees.

[14] Furthermore, the Tribunal notes that the Commission had appealed the Applicant's file as it was dissatisfied with the outcome before the Board of Referees (AD-13-667).

[15] Under the circumstances, the Tribunal has no choice but to refuse the Applicant's request for leave to appeal as it is not applicable.

CONCLUSION

[16] The Tribunal refuses leave to appeal.

Pierre Lafontaine

Member, Appeal Division