



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 39

Date: January 25, 2016

File number: AD-13-129

APPEAL DIVISION

Between:

A. C.

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 before the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On July 24, a Board of Referees found that:

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

[3] The Applicant filed an application for leave to appeal to the Appeal Division on August 23, 2013.

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* states 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 following are the only grounds of appeal:

- (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] 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 his 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] 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 to which the response might justify setting aside the decision under review.

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

[12] The Tribunal finds that the issue between the parties stems from the interpretation of section 35 and subsection 36(9) of the Regulations.

[13] Between 2007 and 2011, Air Canada sold a portion of its heavy maintenance operations to an entity that would eventually become Aveos. In 2012, Aveos shut its doors and, following an order from the Canada Industrial Relations Board (CIRB) and a decision by Umpire M. T., Air Canada eventually paid a sum to its former employees who had lost their jobs at Aveos.

[14] In his application for leave to appeal, the Applicant states that he had not received any earnings, within the meaning of section 35, and that under subsection 36(9) of the Regulations, any earnings must be allocated to a number of weeks beginning on the week that the employment was terminated. He maintains that it is the termination of employment from Air Canada on July 14, 2011, rather than the layoff caused by the Aveos bankruptcy on March 20, 2012, that should apply for the start date of the allocation.

[15] According to the Respondent, the evidence before the Board of Referees seems to show that the severance pay represents severance packages paid following a lay off or termination from Aveos in March 2012. Therefore, the severance pay should be allocated in the manner prescribed in subsection 36(9) of the Regulations, beginning on the week of layoff or termination from Aveos in March 2012.

[16] The Board of Referees found that the amount received from Air Canada constitutes earnings that must be allocated as of the termination of employment from Aveos.

[17] After reviewing the appeal file, the Board of Referees' 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 Board of Referees' interpretation and application of sections 35 and 36 of the Regulations raise several questions of fact and law, the answer to which may lead to the setting aside of the decision attacked.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division