



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 73

Tribunal File Number: AD-15-1623

BETWEEN:

**R. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY:: Pierre Lafontaine

DATE OF DECISION: February 9, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On November 16, 2015, the Tribunal's General Division found that:

- Refusing an extension of time to file an appeal before the General Division of the Social Security Tribunal was justified.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on December 18, 2015.

### **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 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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order 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] In his application for leave to appeal, the Applicant submits that R. T. termination on April 29, 2015, indicates that the person who completed the form filled in the wrong employee name and number. The correct employee number is X under the name of Entretien T.

[13] He states that he made many efforts to find out why his hours were not insurable. He did not receive any answers. He states that that he meets all the requirements to qualify for Employment Insurance with this employer. Although there were errors in the termination of employment, a revised Record of Employment was issued under the number W36499829 in order to correct the employer information to indicate that he did not work for him but for a separate person. He stresses that he had always received Employment Insurance benefits with this employer in the past.

[14] On January 14, 2016, the Tribunal asked the Applicant to provide detailed reasons to support his Application for leave to appeal. In his response to the Tribunal, the Applicant reiterated the trouble he had gone through to get his mail following his separation in December 2014. He informed the Tribunal that his former spouse was sent a formal notice so that he could obtain his pay stubs in order to prove that his hours were insurable.

[15] Based on the evidence on file, the General Division found that the Applicant did not have a reasonable explanation for his delay, that he did not have an arguable case, and that he failed to show the Respondent's lack of prejudice.

[16] Specifically, the General Division found the following regarding the arguable case criteria:

[18] The Appellant does not meet the second criteria in *Gattellaro*. In this particular case, the evidence on file is clear and the CRA's decision did not seem to be overturned upon the request of one of the parties present. Furthermore, the CRA's decision is applicable and neither the Commission nor the Tribunal have the authority to reverse it. Making such a decision would be void and contrary to public order, as confirmed by the Supreme Court of Canada in *Granger* (SCC 19959). The CRA's decision is therefore still valid and applicable to the Claimant's file. Moreover, the CRA found that the Claimant did not have insurable employment within the meaning of the Act (Exhibit 003-19).

[17] The Applicant states that the Canada Revenue Agency's (CRA) decision, upon which the General Division based its decision, is based on an inaccurate Record of Employment indicating the wrong name and employer number.

[18] The Applicant is essentially challenging the CRA's decision that his employment was not insurable. However, no appeal has been filed with the Tax Court of Canada (TCC) to challenge the CRA's decision, and no request has been submitted to the CRA to determine if the alleged employment is insurable.

[19] As stated by the General Division, the Tribunal does not have the authority to decide whether or not an employment is insurable, or whether or not the hours associated with an employment are insurable. This authority belongs to the CRA, then the TCC. Paragraph 90(1)(a) of the Act clearly states that it is up to the CRA to decide on the insurability of an employment.

[20] Under the circumstances, it is evident from the General Division's decision that it was not in the interest of justice to grant the extension of time to file an appeal before the General Division - *X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

[21] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant does not raise any question to which the answer may lead to the setting aside of the decision attacked.

## **CONCLUSION**

[22] Leave to appeal is refused.

*Pierre Lafontaine*

Member, Appeal Division