



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 90

Tribunal File Number: AD-16-159

BETWEEN:

D. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 15, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 21, 2015, the General Division of the Tribunal determined that:

- The allocation of the Applicant's pension payments 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 January 12, 2016.

ISSUE

[4] The Tribunal must decide 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 leave 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] In his application for permission to appeal, the Applicant submits that he is appealing on the principle of natural justice. He pleads that the fact that he only needed to report his *CPP* for one year as earnings for Employment Insurance benefits and no further claims in the future is neither natural nor justified.

[10] A letter was sent by the Tribunal on January 19, 2016, asking the Applicant to submit the reasons in detail why he was appealing the decision of the General Division.

[11] The Applicant replied to the Tribunal on January 26, 2016, that he worked for over 40 years and that he is still employed. He has paid into the *CPP* and the *EI* and paid income tax on his earnings all his life. Now when it is time to receive his *CPP*, he finds out that it is considered earnings on the first year of receiving benefits. The second claim and future claims, he doesn't have to report his *CPP* as earnings. He is appealing because this is unjust and unfair. It is his opinion that the law is neither right of just. He hopes the Appeal Division will understand his beliefs in fairness.

[12] The Tribunal finds that, although requested in his initial application form and by letter, the Applicant has not identified any errors in 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.

[13] After applying for benefits, the Applicant started receiving *CPP* payments. When the Respondent became aware of these payments, they were allocated as earnings, therefore resulting in an overpayment for which the Respondent claimed reimbursement.

[14] It is clear and settled law that *CPP* payments constitute earnings when calculating employment insurance claims and that they are to be allocated when paid or payable regardless of the method of payment or when the payment is ultimately made.

[15] The Tribunal, although sensitive to the arguments of the Applicant, is bound by the *Employment Insurance Act* and the *Regulations* and would be unable to render a contradictory decision. Only Parliament has the authority to change the current legislation.

[16] Therefore, the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division