



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 124

Tribunal File Number: AD-16-310

BETWEEN:

L. 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: March 7, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On February 1st, 2016, 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*”).

[3] The Applicant requested leave to appeal to the Appeal Division on February 15, 2016.

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, in support of her application for leave to appeal, submits the following:

- The General Division refused to exercise its jurisdiction. At the time of her claim, both section 19(2) of the *Employment Insurance Act* (the “Act”) as enacted and section 19(2.1) as adapted by section 77.95 of the *Regulation* to the *Act* were in force. In exercising its jurisdiction the General Division should have applied section 19(2) of the *Act* to her income;
- The General Division erred in law in its decision. The calculation of overpaid benefits is determined under section 19(3) of the *Act*. That section only allows for calculation under section 19(2) and not 19(2.1). Section 19(2.1) has been used to calculate her overpayment.
- The General Division based its decision on an erroneous finding of fact without regard for the material before it in finding that she has been overpaid benefits, the General Division erred in determining that her pension income is income from working while on claim and subject to calculation under section 19(2.1) not section 19(2). It has further erred in confirming the amount of overpayment

without regard to section 19(3) of the *Act* should the argument re section 19(2) versus section 19(2.1) fail.

[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