



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. J. B.*, 2016 SSTA DEI 161

Tribunal File Number: AD-16-383

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

J. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to appeal decision

DECISION BY:: Pierre Lafontaine

DATE OF DECISION March 23, 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 15, 2016, the General Division of the Tribunal determined that:

- The allocation of earnings was not calculated by the Applicant 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 March 7, 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 the application for leave to appeal, submits the following:

- The General Division ignored crucial evidence on file and failed to explain why it gave more weight to the contradicting statements made at the hearing rather than to documentary evidence submitted by the employer to the Applicant;
- The collective agreement on file explains that upon signing an agreement, a lump sum payment was paid to employees to compensate for a loss in salary increase. Therefore, this money is presumed earnings arising out of employment, pursuant to the *Regulations*, and the General Division erred when it decided otherwise;

- Furthermore, the agreement does not mention that the payment of the signing bonus was conditional to the return to work. The General Division erred in fact and in law when it modified the allocation of the bonus made by the Applicant.

[10] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of the 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