



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. T. v. Canada Employment Insurance Commission*, 2016 SSTADEI 266

Tribunal File Number: AD-16-668

BETWEEN:

P. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division– Leave to appeal decision

DECISION BY:: Pierre Lafontaine

DATE OF DECISION: May 20, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 11, 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 May 9, 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] In his application for permission to appeal, the Applicant mentions that despite having the available information, the Respondent delayed calculating the allocation. He submits that the Respondent misinformed the Employer about how it should be reporting the monies in the ROE's. It was therefore amended three times, proving that there was miscommunication between the Respondent and the Employer. By the time it was corrected, there was an enormous backlog and he wasn't notified until a year later of the mistake. He submits that the three records of employments that were amended all have his severances showing on them. The Respondent was therefore well aware from the start of his severance.

[10] The Defendant is essentially arguing that the Respondent did not exercise its discretion judicially under section 52 of the *Act*.

[11] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[12] 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

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

Pierre Lafontaine

Member, Appeal Division