



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 275

Tribunal File Number: AD-16-702

BETWEEN:

**A. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division– Leave to appeal decision**

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DECISION BY:: Pierre Lafontaine

DATE OF DECISION: May 26, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On April 19, 2016, the General Division of the Tribunal determined that:

- The Applicant should be disentitled to benefits for failing to prove his availability for work as of April 19, 2009, pursuant to paragraph 18(1)(a) of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on May 17, 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 essentially submits the following grounds of appeal:

- a) the General Division made an error when it said that he was absent at the previous hearing. It was actually the Member that was not present and the case had to be rescheduled because of that;
- b) it is against the *Canadian Human Rights Act* to mention his illness in public records.
- c) the statement of his mother to the Respondent was misleading information. His mother was the one who got him hospitalized to get access to his residence and the money from his belongings. His hospitalisation delayed the reception of his disability benefits.
- d) he disagrees with the decision of the General Division since he raised a reasonable doubt in regards to his job search;

- e) his doctor only said that it was wise for him not to go back to his job but did not say he could never work again. He as a right to work under the *Canadian Human Rights Act*;
- f) the employer should have told him to apply for sickness benefits;
- g) the Respondent is the one who made the error and he should not have to reimburse the overpayment created by no fault of his own. He wants the overpayment erased by the Respondent.

[10] In his application for permission to appeal, the Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[11] Unfortunately, the Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified 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.

[12] 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 no reasonable chance of success.

[13] If the Applicant wants to request a write-off of his debt, a formal request should be made directly to the Respondent so that a decision is rendered on that issue.

## **CONCLUSION**

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

*Pierre Lafontaine*

Member, Appeal Division