



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 295

Tribunal File Number: AD-16-236

BETWEEN:

D. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 8, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 25, 2015, 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 3, 2016 after receiving communication of the General Division decision on January 5, 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 argues that the General Division erred in law when it considered as earnings under the *Regulations* the sum of \$17,000.00 received by the Applicant in relation to claims of harassment and discrimination. The Applicant also submits that the General Division went beyond the scope of its stated jurisdiction, and failed to exercise the jurisdiction that it did have to determine the preliminary determination described in its March 9, 2015 Notice of Intention to Summarily Dismiss. Beyond a preliminary determination whether the Applicant had made out a *prima facie* case, the General Division issued full factual findings, evidence opinions and legal conclusions beyond the scope of its jurisdiction.

[10] The Applicant further submits that the decision of the General Division is based on a fundamental misunderstanding and/or distortion of the factual record without regard to the material facts, documents and submissions before it. She gives examples in support of her position. She pleads that the General Division ignored the most important piece of evidence which was the March 14, 2014 Discrimination Grievance.

[11] She pleads that it is apparent from the resume of the submissions of the parties written by the General Division in its decision that it gave undue and unfair consideration of the Respondent's submissions over the Applicant's.

[12] The Applicant argues that there is simply no basis - legal, factual, actual or otherwise - for the General Division's finding that the \$17,000.00 at issue was "paid in settlement of a grievance resulting from a termination of employment" (para. 26); or as "compensation for the termination of the Appellant's employment" (para. 29); or as a "severance payment" (para. 31); or "received in settlement of an action relating to her dismissal" (para. 32); or "resulting from the termination of employment" (para. 33); or "paid ... as severance funds ... to compensate the Appellant for work performed" (para. 35). She submits that in the absence of evidence and reason these findings by the General Division are patently arbitrary and erroneous.

[13] The Applicant finally submits that there were numerous breaches of principles of natural justice by the General Division.

[14] 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

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

Pierre Lafontaine
Member, Appeal Division