



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. T. v. Canada Employment Insurance Commission*, 2016 SSTA DEI 373

Tribunal File Number: AD-16-900

BETWEEN:

**R. T.**

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: July 14, 2016

## REASONS AND DECISION

### DECISION

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

### INTRODUCTION

[2] On June 14, 2016, the Tribunal's General Division held as follows:

- the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* ("the Regulations");
- penalties might be imposed on the Appellant under subsection 38(1) of the *Employment Insurance Act* ("the Act") because he knowingly made one or more false or misleading statements or representations.

[3] The Applicant filed an application for leave to appeal before the Appeal Division on July 5, 2016.

### ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

### THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* ("the DESD Act") provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits.

[9] At the application for leave to appeal stage, the Applicant does not have to prove his case. The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact, or jurisdiction to which the response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant essentially claims in his application for leave to appeal that the General Division erred in its assessment of the facts and that it ignored the evidence submitted by the Applicant without explaining why.

[13] The Applicant also contends that the General Division erred in its interpretation of what constitutes a *de novo* trial and that that influenced the General Division's findings. He argues that the General Division erred in its application of the statutory provisions to the facts of this case.

[14] Upon review of the appeal file, the General Division's decision and the arguments in support of the application for the leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The applicant raised a question the answer to which may result in the setting aside of the decision under review.

### **CONCLUSION**

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

*Pierre Lafontaine*  
Member, Appeal Division