



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. D. D.*, 2016 SSTADEI 433

Tribunal File Number: AD-16-1024

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**D. D.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 24, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On July 21, 2016, the General Division of the Tribunal determined that the Applicant had sufficient hours to qualify for regular benefits pursuant to section 7 of the *Employment Insurance Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on August 11, 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 exceeded its jurisdiction in determining the insurability and quantum of insurable hours. The Applicant submits that the correct avenue for the General Division would have been to refer the matter back to the Applicant under section 32 of the *SST Regulations* for investigation and review based on a request of insurability from the *Canada Revenue Agency (CRA)*.

[10] Considering that there is an established jurisprudence that the *CRA* has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the *Act* - *Canada (AG) v. Romano*, 2008 FCA 117, *Canada (AG) v. Didiolato*, 2002 FCA 34, *Canada (A.G.) v. Haberman*, 2000 FCA 150, 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