



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *G. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 436

Tribunal File Number: AD-16-892

BETWEEN:

**G. D.**

Applicant

and

**Canada Employment Insurance Commission**

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 25, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On May 31, 2016, the Tribunal's General Division issued the following decisions:

- Issue 3: The appeals on the issues concerning the Appellants' interruption of earnings are dismissed.
- Issue 5: The appeals on the issues concerning Appellant G. D.'s availability are dismissed.
- Issue 6: The appeal on the issue concerning the allocation of Appellant G. D.'s earnings in file GE-15- 3331 is dismissed.
- Issue 7: The appeal concerning the false or misleading statements and the penalty imposed on Appellant G. D. in file GE-15- 3331 is dismissed with amendments.

[3] The Applicant is presumed to have filed his application for leave to appeal on July 5, 2016, after receiving the General Division's decision on June 7, 2016.

### **ISSUE**

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

### **THE LAW**

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n 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 *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## **ANALYSIS**

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

(a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) The Board of Referees 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, and lower, hurdle for the applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the applicant does not have to prove his case.

[9] 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 *Department of Employment and Social Development 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 submits that the General Division failed to consider the evidence before it and that it erred in law on the issue of interruption of earnings. He essentially argues that the evidence before the General Division proved that there was no relationship between the benefits he received and his employment during the unemployment period. He maintains that the General Division erred when it disregarded the case law submitted, which he believes was applicable to the case.

[13] As regards the issue of availability, the Applicant states that the General Division should have concluded that he was available by taking into account the specific facts of this case. The Tribunal finds that the General Division had failed to decide on the issue of availability given its conclusions on the issue of interruption of earnings, but that it nevertheless dismissed the Applicant's appeal on this issue.

[14] The Applicant maintains that the General Division had also overlooked the accounting evidence submitted at the hearing, which was more detailed and complete and which showed that the Respondent's calculations of the earnings allocation was incorrect.

[15] Finally, the Applicant indicates that the General Division erred in finding that he had acted wilfully yet reducing the penalty on the grounds that the employer had been a victim of accounting manipulations and that proceedings on the issue were in progress.

[16] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised several questions of fact and law, the answers to which may lead to the setting aside of the contested decisions.

## **CONCLUSION**

[17] Leave to appeal is granted.

*Pierre Lafontaine*  
Member, Appeal Division