



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. J. B.*, 2016 SSTADEI 475

Tribunal File Number: AD-16-1117

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

J. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 15, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

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

- No allocation of earnings was warranted pursuant to section 35 and 36 of the *Employment Insurance Regulations (Regulations)*;
- The Respondent did not knowingly provide false or misleading information to the Applicant justifying a penalty pursuant to section 38 of the *Employment Insurance Act (Act)*;
- The issuance of a notice of violation pursuant to section 7.1 of the *Act* was not justified.

[3] The Applicant requested leave to appeal to the Appeal Division on September 9, 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 (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, in support of the application for leave to appeal, submits the following:

- The Federal Court of Appeal affirms the onus is on the claimant to prove that documentary evidence is insufficient. Mere allegations are insufficient to cast doubt on the documentary evidence. Furthermore a claimant is obligated to declare all earnings in the weeks worked. (*Dery v. Canada (AG)*, 2008 FCA 291; *Canada (AG) v. Bernard*, A-136-97);
- The Respondent admitted to not declaring hours/earnings in weeks worked but declaring them with hours/earnings in other weeks in order to subsidize his

earnings with benefits when earnings were low. This information was also substantiated by the employer and other employees;

- The General Division erred in negating the weekly earnings information provided by the employer as the Respondent provided no evidence to contradict the majority of the information;
- The General Division erred when it found false representations were not made as the Respondent did not have knowledge, education or sophistication to engage in the unlawful scheme of the employer and therefore, did not knowingly make a misrepresentation or provide false or misleading information;
- Contrary to the conclusion of the General Division, the Applicant exercised its jurisdiction and met the burden of proving on a balance of probabilities that the Respondent knew the answers he provided were false or misleading when on his weekly claim for benefits, knowing he had worked, he answered no to the question 'did you work or have earnings' for the period. (*Ftergiotis v. Canada (AG)*, 2007 FCA 55)
- The reasonable conclusion given the evidence and jurisprudence is that the Respondent failed to declare his earnings in the weeks they were earned. He received benefits to which he was not entitled and section 43 of the *Act* confirms the liability of a claimant to repay benefits to which he is not entitled;
- A Tribunal cannot interfere with the discretionary authority of the Applicant to impose a penalty and issue a notice of violation unless it can be shown it exercised this power in a non-judicial manner.

[10] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of the 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

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

Pierre Lafontaine
Member, Appeal Division