



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. G. v. Canada Employment Insurance Commission*, 2016 SSTADEI 562

Tribunal File Number: AD-16-1307

BETWEEN:

J. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 29, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On September 9, 2016 the General Division of the Tribunal determined that the Respondent was entitled to reconsider the Applicant's claim for EI benefits pursuant to the *Employment Insurance Act (Act)* and that the Applicant was only entitled to receive 18 weeks of EI benefits.

[3] The Applicant requested leave to appeal to the Appeal Division on November 18, 2016, after receiving communication of the General Division decision on September 12, 2016.

ISSUES

[4] The Tribunal must decide if it will allow the late application and 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 late application for permission to appeal, the Applicant states that both his depression and the estate responsibilities following his father's passing left him unable to make the thirty day deadline to appeal. The appeal is thirty six days late. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249, *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal 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.

[10] In his application for permission to appeal, the Applicant repeats the arguments he made before the General Division. He believes the General Division decision is not fair. He was completely unaware that he was being overpaid by the Respondent. No one ever told him this information specifically - not his employer or anyone else.

[11] If he had known he was being overpaid during his payment periods, he would have obviously called his local Employment Insurance office to have them change his account

details. He finds it unsettling that he was not even offered a negotiation of sorts for a mistake that was not his own. For this, he would like to have his case reconsidered.

[12] The Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[13] Furthermore, the Federal Court of Appeal has clearly and constantly decided that an applicant who receives money for which he is not entitled to, even following a mistake of the Respondent or the Employer, is not excused from having to repay it - *Lanuzo v. Canada (A.G.)*, 2005 CAF 324.

[14] The Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. Therefore, the Tribunal finds that the appeal has no reasonable chance of success.

[15] If the Applicant wants to request a write-off of his debt, a formal request should be made directly to the Respondent so that a decision is rendered on that issue.

CONCLUSION

[16] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division