



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 578

Tribunal File Number: AD-16-1253

BETWEEN:

**K. S.**

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: December 20, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On September 20, 2016, the General Division of the Tribunal determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations*.

[3] The Applicant requested leave to appeal to the Appeal Division on November 1, 2016 after receiving the General Division decision on September 21, 2016.

### **ISSUES**

[4] The Tribunal must decide if it will allow the late application for leave to appeal 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 she tried to contact Service Canada to inquire on her next step but the line was always busy. She filed her appeal as soon as she was connected with Service Canada who informed her of the appeal process. The Tribunal finds, in the present circumstances, and considering that the Applicant was only ten days late, that it is in the interest of justice to grant the Applicant's request for an extension of time to file her 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 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.

[10] In her application for permission to appeal, the Applicant mentions that the Respondent failed to deal with her file expeditiously and therefore her severance monies were not dealt with from the start of her claim creating through no fault of her own an overpayment that is causing her financial hardship.

[11] The Federal Court of Appeal has clearly and constantly decided that an applicant who receives money for which she is not entitled to, even following a mistake of the Respondent, is not excused from having to repay it - *Lanuzo c. Canada (A.G.)*, 2005 FCA 324.

[12] The Tribunal finds that the Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. She 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.

[13] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

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

## **CONCLUSION**

[15] The Tribunal allows the late application but refuses leave to appeal.

Pierre Lafontaine  
Member, Appeal Division