



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *J. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 586

Tribunal File Number: AD-16-1368

BETWEEN:

**J. B.**

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 30, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On November 4, 2016, the Tribunal's General Division found as follows:

- The earnings had been allocated in accordance with sections 35 and 36 of the *Employment Insurance Regulations (Regulations)*.

[3] The Applicant filed an application for leave to appeal before the Appeal Division on December 12, 2016, after the General Division's decision was communicated to him on November 10, 2016.

### **ISSUE**

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

### **THE LAW**

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* provide that "[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal."

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides 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 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower 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 their case.

[9] The Tribunal will grant leave to appeal if the Applicant shows 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 the answer to which may 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] In his application for leave to appeal, the Applicant submits that his disability insurance should not have been allocated. He argues that it was up to the employer to repay the amounts owing and that the claim against him is ill-founded. He also raises a question of natural justice.

[13] After reviewing 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 a question relating to the interpretation and application of sections 35 and 36 of the *Regulations* the answer to which may lead to the setting aside of the decision under review.

## **CONCLUSION**

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

Pierre Lafontaine

Member, Appeal Division