



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. J. M.*, 2017 SSTADEI 53

Tribunal File Number: AD-17-87

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

J. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 13, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 16, 2017, the General Division of the Tribunal determined that a penalty was not warranted as the Respondent did not knowingly make a misrepresentation and that there was no justification for the issuance of a notice of violation. The Applicant requested leave to appeal to the Appeal Division on February 1st, 2017.

ISSUE

[3] The Tribunal must decide if the appeal has a reasonable chance of success.

THE LAW

[4] 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”.

[5] 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

[6] 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.

[7] 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.

[8] The Applicant, in its leave to appeal application, submits that section 38 of the *Employment Insurance Act* (Act) grants the Applicant sole discretion to decide whether to impose a penalty in cases of misrepresentation, where, on a balance of probabilities, false or misleading information is knowingly provided which misleads the Applicant and results in the receipt of benefits to which one is not entitled. The Applicant submits that a tribunal cannot interfere unless it is determined the Applicant did not exercise its discretion judicially - *Canada (A.G.) v. Uppal*, 2008 FCA 388.

[9] The Applicant submits it exercised its discretion judicially and that the General Division exceeded its jurisdiction by substituting the decision and allowing the appeal. The Applicant initially considered there were no mitigating circumstances presented for the Respondent failing to declare work or earnings for eleven weeks. The Respondent admitted to knowing his actions were wrong and to knowing he was not entitled to benefits received for those weeks. He was confused as to how to report due to disabilities but took no action to obtain clarification from the Applicant or to notify the Applicant of his actions when in contact four months later.

[10] The Applicant pleads that it later took into consideration the mitigating circumstances presented in the Respondent's appeal and reduced the 50% imposed penalties to 25%. The Applicant submits it further exercised its discretion judicially when it considered the mitigating circumstances, the seriousness of the Respondent's actions, prior

offences and the overall impact on qualifying for future claims, and determined the violation was still warranted.

[11] The Applicant argues that the General Division made an erroneous finding of fact in determining that because of the Respondent's disabilities, he did not knowingly make misrepresentations. Although his disabilities may have made details of declaring his work and earnings confusing, the Respondent stated he knew his actions were wrong and that he was not entitled to the monies received.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division