



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. J. v. Canada Employment Insurance Commission*, 2017 SSTADEI 54

Tribunal File Number: AD-17-107

BETWEEN:

M. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 14, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 4, 2017, the General Division of the Tribunal determined that the Applicant did not have sufficient hours of insured employment to establish a claim pursuant to section 93 of the *Employment Insurance Regulations*.

[3] The Applicant requested leave to appeal to the Appeal Division on February 6, 2017, after receiving communication of the decision of the General Division on January 16, 2017.

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] In her application for permission to appeal, the Applicant submits that the Respondent did not include all of the insured hours of employment performed during the 13 weeks qualifying period extension when calculating her claim. She has filed her paystubs and attendance records from the employer to support her position that she has accumulated enough hours to qualify for benefits.

[10] Pursuant to section 90(1) of *the Employment Insurance Act* (Act), only an officer of the Canada Revenue Agency (CRA) authorized by the Minister can make a ruling on how many hours an insured person has had in insurable employment.

[11] It is well established in jurisprudence that the CRA has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the Act - *Canada (A.G.) v. Romano*, 2008 FCA 117, *Canada (A.G.) v. Didiodato*, 2002 FCA 34, *Canada (A.G.) v. Haberman*, 2000 FCA 150.

[12] Unfortunately for the Applicant, the Tribunal has no jurisdiction on such matters. A request for a ruling must be made to the CRA who will then determine the number of hours the Applicant has had in insurable employment.

[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. The Applicant has not set out a reason which falls into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division