



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 57

Tribunal File Number: AD-17-102

BETWEEN:

M. M.

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 grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On January 11, 2017, the General Division of the Tribunal determined that:

- The allocation of earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations* was to be upheld;
- The imposition of a penalty pursuant to section 38 of the *Employment Insurance Act* (Act) for making a misrepresentation by knowingly providing false or misleading information to the Respondent was to be upheld;
- The Notice of Violation issued pursuant to section 7.1 of the Act was to be upheld.

[3] The Applicant requested leave to appeal to the Appeal Division on February 3, 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] 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] The Applicant submits that the General Division erred in the interpretation and application of the legal test to impose a penalty. She submits that the facts demonstrate that she did not know or ought to have known that she had to report her income. She pleads that the Respondent did not discharge its onus of establishing that she had knowingly made false statements with respect to income earned while on paternity leave.

[10] The Applicant submits that her explanation was reasonable and should have been given weight and consideration in the General Division's decision itself, and not merely as mitigating factors in considering the resulting penalty after rendering a decision.

[11] 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 a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division