



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 51

Tribunal File Number: AD-17-93

BETWEEN:

R. G.

Applicant

and

Canada Employment Insurance Commission

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

INTRODUCTION

[2] On January 6, 2017, the General Division of the Tribunal decided not to allow an extension of time for the Applicant to appeal.

[3] The Applicant requested leave to appeal to the Appeal Division on January 31, 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 his application for permission to appeal, the Applicant submits that because the Respondent made mistakes in his file, he is forced to reimburse sums that he no longer has in his possession. These amounts, he pleads, were supposed to be deducted from his benefits.

[10] The Tribunal finds that the Applicant has not identified any 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 to refuse an extension of time to appeal.

[11] It is clear and settled law that Canada Pension Plan payments constitute earnings when calculating employment insurance claims and that they are to be allocated when paid or payable regardless of the method of payment or when the payment is ultimately made.

[12] The Federal Court of Appeal has also constantly decided that a claimant 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 v. Canada (A.G.)*, 2005 FCA 324.

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

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division