



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. H. v. Canada Employment Insurance Commission*, 2017 SSTADEI 52

Tribunal File Number: AD-17-73

BETWEEN:

A. H.

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

INTRODUCTION

[2] On December 15, 2016, the General Division of the Tribunal determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations (Regulations)*.

[3] The Applicant requested leave to appeal to the Appeal Division on January 25, 2016, after receiving communication of the General Division decision on December 30, 2016.

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)*, “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] The Applicant argues that the General Division erred in law when it considered the amounts received from his employer as earnings under the *Regulations*. The Applicant submits that the General Division incorrectly concluded on a settlement between himself and his employer for (a) \$10,000 lump sum and (b) 24 weeks of pay.

[10] He submits that the final settlement of the dispute resulted in a lump sum of \$21,692 in damages and therefore should not be allocated as retirement allowances. He pleads that the General Division erred in stating that the end result of his settlement with his employer was severance or monies due to loss of employment because the initial dispute with the employer was due to the misrepresentations of employment, not the loss of employment.

[11] 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 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