



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 93

Tribunal File Number: AD-17-124

BETWEEN:

A. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 3, 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 9, 2017, 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 is deemed to have requested leave to appeal to the Appeal Division on February 6, 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 she received the Wage Earners Protection Plan (Wepp) funds on August 27, 2015, and was informed on September 18, 2015, for the first time, that the Wepp funds were considered earnings. She did not try to hide her receipt of the Wepp funds.

[10] The Tribunal sent a correspondence to the Applicant dated February 16, 2017, requesting that she explain in detail why she was appealing the decision of the General Division. A reply was received by the Tribunal on February 24, 2017.

[11] In her reply, the Applicant expresses her dissatisfaction with the Government of Canada going after her for \$1,600.00 which she admits receiving while never told that it was to be classified as earnings.

[12] 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.

[13] After applying for benefits, the Applicant received a settlement payment of \$3,548.00 through the WEPP. When the Respondent became aware of this payment, it was

allocated as earnings, therefore resulting in an overpayment for which the Respondent claimed reimbursement.

[14] The General Division found that the amount received constituted earnings under section 35(2) of the Regulations and that it was properly allocated by the Respondent under section 36(9) of the same Regulations.

[15] The Tribunal, although sensitive to the arguments of the Applicant, is bound by the Regulations and unable to render a contradictory decision.

[16] Therefore, the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division