



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. M. D.*, 2017 SSTADEI 107

Tribunal File Number: AD-17-218

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

M. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 16, 2017

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal (Tribunal) grants leave to appeal to the Appeal Division of the Tribunal.

INTRODUCTION

[2] On February 28, 2017, the General Division of the Tribunal found that the employer's contributions that the Respondent had received at the conclusion of the disbursement of her registered pension plan (RPP) had not been paid under her employment contract, due to her dismissal or termination of employment, within the meaning of subsections 36(9) to 36(11) of the *Employment Insurance Regulations* (Regulations).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 13, 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* (DESDA), "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 DESDA provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

ANALYSIS

[7] According to subsection 58(1) of the DESDA, 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] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above-mentioned grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the DESDA, be able to see a question of law, fact or jurisdiction, the answer to which may lead to the setting aside of the decision under review.

[11] In view of the above, does the Applicant's appeal have a reasonable chance of success?

[12] In its application for leave to appeal, the Applicant submits that the General erred in fact and in law by basing its decision on the provisions contained in paragraph 35(19)(b) of the Regulations. It also erred in its interpretation of the provisions contained in section 36 of the Regulations and of the relevant case law.

[13] The Applicant argues that it was unreasonable for the General Division to conclude that the employer's contributions to the pension fund had not been paid under the employment contract, due to a dismissal or termination of employment. The facts on the record show that the Respondent received a sum for the reimbursement of the employer's contributions. That sum was paid to the Respondent because her employment had ended. Therefore, it had to be allocated pursuant to subsection 36(9) of the Regulations. The Applicant submits that the General Division erred when it concluded otherwise.

[14] Upon review of the appeal docket, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that one of the grounds of appeal has a reasonable chance of success. The Applicant is raising a question relating to the General Division's interpretation and application of sections 35 and 36 of the Regulations. The Applicant has therefore raised a question the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[15] The Tribunal grants leave to appeal to the Appeal Division of the Tribunal.

Pierre Lafontaine

Member, Appeal Division