Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *J. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 98

Tribunal File Number: AD-17-84

BETWEEN:

**J. P.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 13, 2017

Canada

## REASONS AND DECISION

### DECISION

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

### INTRODUCTION

[2] On January 12, 2017, the Tribunal's General Division concluded that the Applicant had not accumulated a sufficient number of hours of insurable employment for qualifying for Employment Insurance benefits under section 7 of the *Employment Insurance Act* (Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on January 30, 2017.

### ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

### THE LAW

[5] As provided for in 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 states 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 Act, 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial 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 grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the DESD Act, 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 light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her application for leave to appeal, the Applicant submitted that the Respondent had not promptly informed her of an amendment to the Act, which had a profound impact on her eligibility to receive Employment Insurance benefits. She argued that her appeal was based on harm caused by erroneous information that she had received from the Respondent and the General Division regarding the effective date of the amendment to the Act. For her, it was clear that if she had been well informed, with a timely follow-up, she would have made a claim for Employment Insurance benefits on July 3, 2016, as she was still at that moment without employment income.

[13] She is therefore asking that the Tribunal overturn its decision of January 12, 2017, and rule in her favour. She is also asking that the Tribunal grant her retroactive financial assistance as of July 3, 2016, which should have been granted following a new benefit

claim, even though she had not initiated that new application in a timely fashion given the errors mentioned previously.

[14] The Applicant submitted an application for Employment Insurance benefits on March 29, 2016. Her qualifying period was therefore established to be from March 29, 2015, to March 26, 2016. She worked for two employers, "Court Administration Services" from November 9, 2015, to December 31, 2015 (308 hours of insurable employment), and "Elections Canada" from August 12, 2015, to November 5, 2015 (531 hours of insurable employment). She also specified that she was the owner or co-owner of a business for which she worked.

[15] However, the Canada Revenue Agency determined that the hours that the Applicant had worked at her business between March 1 and 24, 2016, were not insurable.

[16] The General Division stated the following in its decision:

> [translation]
>
> [28] Inconveniently for the Appellant, the amendments became effective on July 3, 2016, and apply only to the benefit periods established as of July 3, 2016. The amendments are not retroactive and the NERE provisions remain applicable to the benefit periods established before July 3, 2016.
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> [29] As is the case in this situation, the benefit period that the Appellant established is March 29, 2016, and, therefore, subsection 7(4) of the Act applies.
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> [30] Consequently, subsection 7(3) of the Act stipulates that, to be eligible for Employment Insurance benefits, "An insured person who is a new entrant or a re-entrant to the labour force qualifies if the person: (*a*) has had an interruption of earnings from employment; and (*b*) has had 910 or more hours of insurable employment in their qualifying period."
>
> (Underlined by the undersigned)

[17] The evidence before the General Division shows that the Applicant accumulated 839 insurable hours and that she failed to accumulate the required number of hours of insurable employment during her qualifying period to receive Employment Insurance benefits.

[18] Although the Tribunal sympathizes with the Applicant, the Act does not allow any discrepancy and gives the Tribunal no discretion to remedy the defect—*Canada (Attorney General) v. Lévesque*, 2001 FCA 304.

[19] For the reasons stated above, the Tribunal concludes that the appeal has no reasonable chance of success.

**CONCLUSION**

[20] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division