



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. O. v. Canada Employment Insurance Commission*, 2017 SSTADEI 104

Tribunal File Number: AD-17-179

BETWEEN:

A. O.

Applicant

and

Canada Employment Insurance Commission

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

INTRODUCTION

[2] On February 14, 2017, the General Division of the Tribunal determined that the Applicant had failed to submit his reports within the allowable period of time in accordance with sections 10 and 50 of the *Employment Insurance Act* and section 26 of the *Employment Insurance Regulations*.

[3] The Applicant requested leave to appeal to the Appeal Division on February 27, 2017.

ISSUE

[4] The Tribunal must decide whether 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 “[l]eave 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 leave 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, in his application for leave, states that the General Division erred in law in making its decision because the Respondent had made two clerical errors in its correspondence with him in which one of the errors caused prejudice that was ignored in the dismissing of his appeal, contrary to the principle established in CUB 16233, confirmed by the Federal Court of Appeal, in *Desrosiers v. Canada (Attorney General)*, A-128-89.

[10] The Applicant submits that the General Division also erred by assuming the instruction had not been clear to him, even though he stated in clear terms during the hearing that there had been no instruction as a result of the clerical error made by the Respondent. As such, the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for all the facts of the matter based on the material and information before it.

[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 that 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