



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 130

Tribunal File Number: AD-17-141

BETWEEN:

G. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 28, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 13, 2017, the Tribunal's General Division concluded that the Applicant had not accumulated a sufficient number of hours of insurable employment to qualify for Employment Insurance benefits under section 7 of the *Employment Insurance Act* (Act).

[3] The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on February 10, 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* (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] 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 stated grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESDA, be in a position to determine whether there is a question of law, fact or jurisdiction, the answer to which might justify setting aside the decision under review.

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

[12] The Applicant worked for the CSST's board of referees. The Respondent requested that the Canada Revenue Agency (CRA) decide on the insurability of the Applicant's income.

[13] In its April 4, 2016, decision, the CRA found that the employment was insurable pursuant to paragraph 5(1)(d) of the Act. It calculated the Applicant's hours of insurable

employment at 355. This decision was appealed before the Minister of National Revenue. On November 3, 2016, the Minister dismissed the appeal.

[14] The General Division found that the Applicant failed to meet the conditions set out in the Act, given that he had accumulated only 355 of the 910 hours of insurable employment required by the Act.

[15] The Applicant maintains that, in his application for leave to appeal, the General Division erred in its decision with regard to the compensation he received from his employer.

[16] The Tribunal underscores that it does not have the authority to decide on the number of

[17] hours accumulated in insurable employment. Only the CRA is empowered to do so. Paragraph 90(1)(d) of the Act clearly states that only an officer of the CRA authorized by the Minister can make a ruling on how many hours an insured person has had in insurable employment.

[18] The Act does not allow for any discrepancy and gives the Tribunal no discretion to allow the Applicant to meet the required conditions – *Canada (Procureur Général) [Attorney General] c. [v.] Lévesque*, 2001 FCA 304.

[19] For the above-mentioned reasons, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[20] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division