



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *H. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 148

Tribunal File Number: AD-17-266

BETWEEN:

H. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 5, 2017

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) grants leave to appeal before Tribunal's Appeal Division.

INTRODUCTION

[2] On February 24, 2017, the Tribunal's General Division determined the following:

- Imposing a disentitlement to Employment Insurance benefits is warranted under paragraph 18(1)(a) of the *Employment Insurance Act* (Act).
- Imposing a penalty is warranted under section 38 of the Act for having committed an act or omission by knowingly making false or misleading representations.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 29, 2017, after having received the General Division's decision dated March 2, 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] According to subsection 58(1) of the DESD 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 to appeal stage, the Applicant does not have to prove the case.

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

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be in a position to determine whether there is 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 maintained that the General Division had failed to consider the material before it in coming to its decision.

[13] She maintained that the evidence showed that she had kept up constant communication with the Respondent regarding the problems she was having with reporting her earnings and that, afterwards, she had always cooperated with the Respondent to properly establish her earnings.

[14] The Applicant stated that the General Division had misinterpreted and misapplied the legal test on the issue of penalty. She maintained that the evidence failed to prove, as is required by Federal Court of Appeal case law, that she had subjective knowledge that she had been making false statements.

[15] Upon review of the appeal file, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised a question of fact or law, the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

[16] The Tribunal grants leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division