



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 177

Tribunal File Number: AD-17-333

BETWEEN:

**B. D.**

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: May 1, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On March 16, 2017, the Tribunal's General Division determined that the allocation of pension payments had been calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On April 20, 2017, the Applicant requested leave to appeal to the Appeal Division, after receiving the General Division decision on March 28, 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] Regarding the application for leave to appeal, before leave to appeal can be granted, 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.

[9] The Applicant argues that she filled out her *Canada Pension Plan* (CPP) application in good faith and with the correct details. If she had been made aware of or had known that if an individual has been receiving EI benefits prior to applying for CPP, they could be penalized with payback requested in the next year due to a CPP lump-sum payment, she would have acted differently. She asked for information from Service Canada and filled out the CPP application as directed.

[10] It is not disputed that the Applicant filed for sickness benefits on October 3, 2014, and that following this, she received 13 weeks of sickness benefits. She later applied for CPP after returning to work in January 2015 and that she received CPP retroactively beginning June 1, 2014. This affected her sickness benefits from the start of her claim beginning September 21, 2014, up to January 3, 2015.

[11] The CPP benefits that the Applicant received in one sum constitute earnings under paragraph 35(2)(e) of the Regulations, and these benefits were payable on a periodic basis as of June 1, 2014. As a result, they had to be allocated for the period for which they were payable pursuant to subsection 36(14) of the Regulations—*Mosley v. Canada (Attorney General)*, 2017 FCA 56.

[12] Under the CPP, the benefits were payable commencing on June 1, 2014. Therefore, they must be allocated accordingly, even if received in one payment after EI benefits were received.

[13] Unfortunately for the Applicant, the Federal Court of Appeal has also constantly held that an applicant who receives money to which he or she is not entitled, even following a mistake of the Respondent, is not excused from having to repay it—*Lanuzo v. Canada (Attorney General)*, 2005 FCA 324.

[14] Therefore, the Applicant has not convinced the Tribunal that the appeal has a reasonable chance of success.

## **CONCLUSION**

[15] The Tribunal refuses leave to appeal to its Appeal Division.

Pierre Lafontaine  
Member, Appeal Division