



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 183

Tribunal File Number: AD-17-223

BETWEEN:

**D. L.**

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 3, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On February 10, 2017, the Tribunal's General Division determined that the disentitlement to Employment Insurance sickness benefits imposed on the Applicant under section 18 of the *Employment Insurance Act* (Act) and section 40 of the *Employment Insurance Regulations* (Regulations) was justified.

[3] The Applicant is deemed to have filed an application for leave to appeal before the Appeal Division on March 14, 2017, after receiving the General's Division's decision on February 17, 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 any one of the above-mentioned 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 his application for leave to appeal and in the additional information he sent the Tribunal, the Applicant maintains and reiterates his stance before the General Division.

[13] The Appellant submits that one of the Respondent's agents had misled him. He must now pay back the benefits he received after having failed to provide a medical certificate,

whereas the Respondent had not informed him of this requirement in a timely manner. Once he had been informed that he had to submit a certificate, it was too late.

[14] The evidence before the General Division shows that the Appellant did not submit any medical evidence following the Respondent's request on January 28, 2016. The Appellant therefore did not comply with the requirement under the Act to present a medical certificate as proof that he was incapable of working during the period in which he had received sickness benefits, namely, from September 21, 2015, to January 15, 2016.

[15] The onus of proving that his incapacity to work is a result of sickness falls on the Applicant. The Respondent may duly require such proof in accordance with subsection 40(1) of the Regulations. In the absence of such proof, the Respondent is justified in concluding that the Applicant's incapacity has not been proven.

[16] As the General Division has noted, the Tribunal has no choice but to apply the Act and the Regulations. Furthermore, the Federal Court of Appeal has clearly and consistently held that a claimant who receives money to which they are not entitled, even as a result of an error on the part of the Commission, is not excused from having to repay it—*Lanuzo v. Canada (Attorney General)*, 2005 FCA 324.

[17] Upon review of the appeal docket, the General Division's decision and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal does not have a reasonable chance of success.

## **CONCLUSION**

[18] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division