



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. A. v. Canada Employment Insurance Commission*, 2017 SSTADEI 283

Tribunal File Number: AD-17-520

BETWEEN:

**L. A.**

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: July 25, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On June 28, 2017, the Tribunal's General Division determined that the Applicant's allocation of earnings had been calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On July 18, 2017, the Applicant filed an application for leave to appeal with the Appeal Division after he had received the General Division's decision on July 5, 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-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] The Applicant argues that although the General Division is not bound by the agreement reached between the parties, it must nonetheless explain its reasoning in a clear manner, particularly given that, in this case, it restates in its reasons certain excerpts from the agreement while omitting others without justification.

[13] The Applicant submits that the General Division completely failed to consider his position in its analysis. The General Division must consider all of the evidence and clearly explain why it dismissed certain evidence or why it assigned it little or no probative value.

[14] Finally, the Applicant argues that there is no evidence on file indicating that the sum of \$15,000 constitutes earnings. He maintains that the General Division's decision is patently unreasonable.

[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 questions of fact and of law, the answers to which may lead to the setting aside of the decision under review.

### **CONCLUSION**

[16] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division