



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 288

Tribunal File Number: AD-17-521

BETWEEN:

L. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 1, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On June 26, 2017, the Tribunal's General Division decided that the Applicant's Canada Pension Plan retirement pension was properly deducted from her benefits pursuant to sections 35, 36 and 77.95 of the *Employment Insurance Regulations* (Regulations) and subsection 19(2.1) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on July 19, 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] 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 gives the appeal 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 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] In support of her application for leave to appeal, the Applicant argues that this case raises a legislative interpretation issue: does Pilot Project No. 18, or section 77.95 of the Regulations, override subsection 19(2) of the Act? In other words, did the General Division err in applying the threshold for allowable earnings set out in section 77.95 of the Regulations without regard for subsection 19(2) of the Act?

[13] 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, the response to which could justify setting aside the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division