



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. V. v. Canada Employment Insurance Commission*, 2017 SSTADEI 302

Tribunal File Number: AD-17-483

BETWEEN:

**M. V.**

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: August 25, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

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

[3] The Applicant filed an application for leave to appeal to the Appeal Division on June 30, 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* (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 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 application for leave to appeal stage, the Applicant does not have to prove his or her 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 be in a position to determine, in accordance with subsection 58(1) of the DESD Act, 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] Given the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant essentially argues that, by ignoring the discrepancies between the actual earnings and the earnings that his employers had allocated for his various jobs, the General Division did not act diligently.

[13] The General Division found that the Applicant had provided no evidence clearly establishing that the amounts of the weekly earnings provided by his employers and used by the Respondent were inaccurate or incorrect. Furthermore, it found that the evidence provided by the Applicant did not demonstrate that the Respondent had committed an error in allocating the earnings or that it had allocated those earnings in such a way that was non-compliant with the Regulations.

[14] The Federal Court of Appeal found that the burden of proof for disputing the employer's pay information rests with the claimant, and that mere allegations intended to sow doubt are insufficient—*Dery v. Canada (Attorney General)*, 2008 FCA 291.

[15] It is therefore not sufficient for a claimant to merely cast doubt on the veracity of the employer's remarks. He or she must provide countering evidence before the General Division, which the Applicant has not done. In light of the evidence before it, the General Division could not simply arrive at a different conclusion from the one at which it did arrive.

[16] After reviewing 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 has no reasonable chance of success.

## **CONCLUSION**

[17] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine

Member, Appeal Division