



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. H. v. Canada Employment Insurance Commission*, 2017 SSTADEI 303

Tribunal File Number: AD-17-498

BETWEEN:

**A. H.**

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 Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal of Canada (Tribunal).

### **INTRODUCTION**

[2] On June 14, 2017, the Tribunal's General Division determined that the Applicant had received earnings from his employer during a period in which he had received benefits, and that the Respondent had properly allocated the earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division 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] 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] 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, in his application for leave for appeal, states that his application has a reasonable chance of success if reviewed properly and acknowledged. He should not have to pay back a large sum of money that will affect his ability to pay the rent, as well as his ability to pay for the necessary things for himself and his family.

[10] The Tribunal sent a letter to the Applicant dated July 10, 2017, requesting that he explain in detail his grounds of appeal. The Applicant replied to the Tribunal on August 8, 2017.

[11] The Applicant, in his reply to the Tribunal, states that he was still employed but that, because he was on sick leave, he had not received any money from his employer. He filed a bank statement in support of his position. Upon proof that he did receive the money, he will consider to pay.

[12] The parties agreed before the General Division that the Applicant's first day back at work was September 28, 2015. The Request for Payroll Information form that the employer completed indicates that the Applicant had earnings of \$286.00 the week of September 27, 2015, when he returned to work.

[13] The General Division determined from the evidence that the Applicant had been paid \$285.67 in earnings for work he had done during the week of September 27, 2015, to

October 3, 2015. Therefore, the General Division concluded that the Respondent had properly allocated the \$285.67 in earnings to the week beginning September 27, 2015.

[14] The General Division found that the bank statement that the Applicant had provided was not determinative of whether the Applicant had income for the week in question, because it covered only up to September 30, 2015. The employer's bi-weekly pay period for the week he had started ended on October 4, 2015, and, therefore, this would not have been reflected in the September bank statement he provided. In any event, the earnings had to be allocated to the period in which the services had been performed pursuant to subsection 36(4) of the Regulations.

[15] For the above-mentioned reasons, and after reviewing the docket of appeal and the General Division's decision, as well as after considering the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[16] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division