



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v. Canada Employment Insurance Commission*, 2017 SSTADEI 309

Tribunal File Number: AD-17-560

BETWEEN:

B. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 28, 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 July 14, 2017, the Tribunal's General Division determined that the money that the Applicant had received from the employer in August 2015 were earnings within the meaning of the *Employment Insurance Regulations* (Regulations) and that the Respondent had properly allocated the money under the Regulations.

[3] The Applicant requested leave to appeal to the Appeal Division on August 8, 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 support of the application for leave to appeal, submits the following:

- The Member erred in considering the amount received to be income under the Regulations;
- The Member erred in considering the terms of the settlement agreement between her and her former employer;
- The terms of settlement specifically refer to the monies as general damages that do not constitute unpaid wages;
- The money was received without statutory deductions, indicative of a payment for monies other than wages;
- She has met her onus to prove the settlement was for monies other than wages.

[10] After reviewing the appeal docket, the General Division's decision and considering the arguments of the Applicant in support of the request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success.

[11] The Applicant has raised grounds of appeal regarding the interpretation and application of sections 35 and 36 of the Regulations by the General Division, which could lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division