



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 321

Tribunal File Number: AD-17-449

BETWEEN:

**D. S.**

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: September 19, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On April 17, 2017, the General Division of the Tribunal determined that the allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] The Applicant requested leave to appeal to the Appeal Division on June 13, 2017, after receiving the General Division decision on April 27, 2017.

### **ISSUES**

[4] The Tribunal must decide whether it will allow the late appeal and 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] In regard to the late application for leave to appeal, the Tribunal is convinced that the language barrier requiring that the Applicant proceed at all steps with a translator explains the 17-day delay in filing his application. The Tribunal finds that, in the present circumstances, it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for leave to appeal without prejudice to the Respondent - *X (Re)*, 2014 FCA 249; *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] As regards the application for leave to appeal, before leave 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.

[10] In support of his application for leave to appeal, the Applicant submits that the data provided by the Respondent is inaccurate, as he claims that he never received the total amount of \$1,326.52, which would represent vacation and severance pay. He argues that the information shown on exhibit GD3-35 does not represent how much he received.

[11] The Tribunal notes from the file that the employer did not explain the discrepancies in the Record of Employment and did not confirm the gross amount of severance and vacation pay, or whether the vacation pay was paid on each cheque, on separation, or on an anniversary date and, if so, the date of the anniversary (GD3-29).

[12] After reviewing the appeal docket and the General Division decision, and considering the arguments of the Applicant in support of his request for leave to appeal,

the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons that fall into the above-enumerated grounds of appeal and that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[13] The Tribunal grants leave to appeal to the Appeal Division of the Tribunal.

Pierre Lafontaine  
Member, Appeal Division