



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 325

Tribunal File Number: AD-17-618

BETWEEN:

L. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 26, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On August 20, 2017, the Tribunal's General Division found that the Applicant's 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 September 11, 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* (the 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 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 their case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the stated 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 to which the response might 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, in her application for leave to appeal, argues that she moved on June 24, 2017. She argues that she has a record of her calls and that she received no calls or messages from the General Division between June 27 and August 17, 2017. The hearing before the General Division proceeded in the Applicant's absence on August 1, 2017. The notice of hearing dated June 30, 2017, which was sent to the Applicant's previous address, was returned by the postal service and labelled "unclaimed." However, the General Division's decision was sent to the Applicant's new address on August 10, 2017.

[13] The Applicant argues that she can show that the employer's errors generated false results on both the Employment Insurance reports and the Record of Employment, as well as on the income tax return, and that she had to pay fees on them.

[14] 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 of natural justice, the answer to which may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division