



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 349

Tribunal File Number: AD-17-548

BETWEEN:

**G. L.**

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 27, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On July 19, 2017, the General Division of the Tribunal determined that the Applicant had received earnings from his employer during a period in which he had been receiving benefits and that the Respondent had properly allocated the earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations* (Regulations). The General Division also determined that the imposition of a non-monetary penalty to the Appellant pursuant to section 38 of the *Employment Insurance Act* was justified.

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on July 31, 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] In his application for leave to appeal, the Applicant states that the Respondent is aware of his medical evidence and situation. He could not perform well when using the Respondent's telephone reporting system because it was difficult for him to follow. He submits that the Respondent waited close to 72 months to proceed with its review. He states that no incorrect reports have occurred since he has learned to prepare the information before submitting his reports. He further argues that he has already paid the overpayment following his incorrect reports.

[10] The Tribunal sent a letter to the Applicant dated August 25, 2017, requesting that he explain in detail his grounds of appeal by September 22, 2017. The Applicant replied to the Tribunal on September 20, 2017.

[11] The Applicant, in his reply to the Tribunal, states that the General Division did not consider the explanations he had given to the Respondent. The evidence showed that he had experienced confusion, thinking disorders and memory loss. He states that the Respondent was disrespectful towards a disabled worker. He argues that internet reporting is a better

reporting tool than telephone reporting, especially for him given his disabilities. He also asks that the Tribunal stop Revenue Canada from collecting the overpayment.

[12] The General Division concluded that the Applicant had received earnings from two employers during a period in which he was receiving benefits and that the Respondent had properly allocated the earnings pursuant to sections 35 and 36 of the Regulations. Furthermore, the General Division demonstrated in detail in its decision why there was no duplication of overpayment.

[13] The General Division also concluded that the Appellant had knowingly made false statements based on three considerations: 1) the questions were straight forward and permitted corrections; 2) the reports were always submitted on Saturdays because the Applicant was working during most of the weeks for the period beginning November 7, 2010, to August 14, 2011; and, most importantly, 3) the Applicant's own **written** admission that he did not declare income so as to keep the benefits coming in to make his car payments (GD3-24).

[14] Unfortunately for the Applicant, an appeal to the Appeal Division of the Tribunal is not a *de novo* hearing, where a party can re-present evidence and hope for a new, favourable outcome.

[15] The Tribunal finds that the Applicant has not identified any errors of jurisdiction or law or identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[16] For the above-mentioned reasons and after reviewing the appeal docket, the decision of the General Division and considering the arguments of the Applicant in support of his request 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 Appeal Division.

Pierre Lafontaine

Member, Appeal Division