



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 359

Tribunal File Number: AD-17-642

BETWEEN:

**A. 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: October 13, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On August 30, 2017, the Tribunal's General Division determined the following:

- The disentitlement imposed on the Applicant from July 26, 2015, to August 29, 2015, and from November 22, 2015, to May 14, 2016, was justified pursuant to sections 9 and 11 of the *Employment Insurance Act* (Act) and section 30 of the *Employment Insurance Regulations* (Regulations) because the Applicant had not proven his state of unemployment.
- The penalty imposed on the Applicant was partly in accordance with section 38 of the Act because he had committed an act or omission by knowingly making false or misleading representations.
- The issuance of a notice of violation to the Applicant was justified under section 7.1 of the Act.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on September 22, 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] According to subsection 58(1) of the DESD 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 leave to appeal stage, the applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that at least one of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be in a position to determine whether there is a question of law, fact or jurisdiction, the answer to which may lead to the setting aside of the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In support of his application for leave to appeal, the Applicant argues that the General Division erred in fact and in law when it found that he had made a false representation by failing to disclose his self-employment with Biodermoil. He maintains that the evidence accepted by the General Division shows that he was not active in the company during his period of unemployment. He had therefore not made any false representations.

[13] He also maintains that the General Division overlooked evidence showing that he was on medication that precluded him from driving during the period of November 15 to December 20, 2015. This means that, during this period, he was not able to drive for Uber.

[14] After reviewing the appeal docket, the General Division's decision and the Applicant's arguments in support of his application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised questions concerning the General Division's interpretation and application of sections 9, 11, and 38 of the Act and section 30 of the Regulations, the answers to which might 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