



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *H. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 402

Tribunal File Number: AD-17-641

BETWEEN:

**H. 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: November 17, 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 May 30, 2014, the General Division of the Tribunal determined that:

- The allocation of the Applicant's earnings had been calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations);
- An extension of the benefit period, pursuant to section 10 of the *Employment Insurance Act* (Act), could not be granted.

[3] The Applicant requested 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] 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] 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.

[9] In his application for leave to appeal, the Applicant submits that, although he does not believe his case to be unique, he feels that his case is a little more complex than the majority of cases. He believes that the facts and circumstances of his case were not taken into consideration. His case is not about applying a simple formula to dismiss his claim.

[10] Severance was paid out 18 months after his dismissal. He questions which date should be used to allocate the earnings. He made no income and received no severance or Employment Insurance benefits after his dismissal. While unemployed, he used his savings and credit to support his family. He used his severance to pay back high interest loans, and he paid taxes on his savings and investments. He submits that he has been paying taxes for 24 years as a Canadian citizen and feels that new immigrants get all the benefits while long-term Canadian tax payers have to jump through hoops to get someone to listen.

[11] The Tribunal sent a letter to the Applicant dated October 13, 2017, requesting that he explain in detail his grounds of appeal. The Applicant replied on November 9, 2017.

[12] In his reply to the Tribunal, the Applicant reiterates the arguments he had previously mentioned in his initial application for leave to appeal.

[13] Before the General Division, the Applicant confirmed that he had received \$7,532.42 in vacation pay, \$227,662.37 in severance pay, and \$4,013.37 pay in lieu of notice, for a total amount of \$239,208.16.

[14] The General Division found that an abundance of case law has established that monies received upon separation, such as vacation and severance pays and pay in lieu of notice, are considered earnings and should be allocated pursuant to subsections 36(9) and 36(10) of the Regulations.

[15] The General Division also found that since these earnings were paid to the Applicant by reason of a separation from his employment, they had to be allocated as prescribed in subsection 36(9) of the Regulations. That is, they had to be allocated to the number of weeks that begins with the week of the separation. The General Division determined that it was not within the Respondent's discretion to move, postpone or otherwise allocate earnings other than as prescribed in the Regulations.

[16] The Tribunal finds that the General Division decision is supported by the Federal Court of Appeal, which has established that the allocation must be effected in accordance with subsection 36(9) of the Regulations, regardless of the period in respect of which the earnings are purported to be paid or payable—*Canada (A.G.) v. Roch*, 2003 FCA 356 (CanLII).

[17] Furthermore, as stated by the General Division, the Applicant was granted an extension of the benefit period by 52 weeks to the week ending August 6, 2016, which is the maximum allowable extension under the Act and the Regulations. No additional extension could be allowable under the Act.

[18] Unfortunately for the Applicant, the Federal Courts have held that the requirements of the Act do not allow any discrepancy and provide no discretion in its application—*Canada (P.G.) c. Levesque*, 2001 FCA 304 (CanLII); *Pannu v. Canada (A.G.)* 2004 FCA 90. Any changes to the Act and Regulations must undoubtedly come from Parliament.

[19] The Tribunal finds that the Applicant has not identified any errors in 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.

[20] Therefore, the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

## **CONCLUSION**

[21] The Tribunal refuses leave to appeal to the Appeal Division of the Tribunal.

Pierre Lafontaine  
Member, Appeal Division