



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 423

Tribunal File Number: AD-17-883

BETWEEN:

**R. G.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 4, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On October 25, 2017, the Tribunal's General Division determined that the distribution of earnings had been carried out in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] On November 16, 2017, the Applicant filed an application for leave to appeal with the Appeal Division after receiving the General Division's decision on October 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] 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 leave to appeal stage, the applicant does not have to prove the 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, 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] The Applicant submits that the General Division decision contains errors of fact regarding the employment end date. He submits that the General Division decision does not account for his request for an antedate proving the actual employment end date.

[13] Before the General Division, the Applicant admitted to having received \$1,679 in earnings from his employer for the week of June 7, 2015. He did not, however, report any earnings for the week of June 7, 2015, when he completed his report.

[14] The General Division found that the amount received from TBC Construction Inc. constituted earnings and that this amount was to be allocated from June 7 to June 13, 2015, pursuant to sections 35 and 36 of the Regulations.

[15] The material before the General Division shows that the Applicant filed an initial claim for Employment Insurance benefits effective May 31, 2015. He then worked for TBC Construction Inc. from June 8 to October 2, 2015. The Applicant renewed his claim for benefits following his work stoppage on October 2, 2015.

[16] The week of May 31 to June 6, 2015, therefore corresponds to the first week of the Applicant's waiting period. The Applicant then received earnings for the week of June 7, 2015, which corresponds to the second week of his waiting period. The General Division found that the earnings received by the Applicant for the week of June 7, 2015, were to be applied to the week beginning October 4, 2015, at the time when benefits were payable to the claimant under subsection 19(1) of the *Employment Insurance Act* (Act).

[17] The Applicant submits that the waiting period should have been served at another time because there was a shortage of work at the beginning of May 2015, well before the start of his claim for benefits on May 31, 2015. However, the Applicant filed his claim for benefits beyond the prescribed timeframe—on June 4, 2015. He therefore submitted an antedate request to the Respondent and wants the Tribunal to consider it.

[18] However, the issue before the General Division was concerning the allocation of the Applicant's earnings. It was therefore not open to the General Division to take over jurisdiction that did not belong to it in rendering a decision on the Applicant's antedate request.

[19] As provided under section 113 of the Act, there can be no appeal to the General Division without a reconsideration decision on the part of the Respondent.

[20] After reviewing the appeal file, 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 on the issue of the allocation of earnings has no reasonable chance of success. The Applicant has not raised a question of fact or law, the answer to which may lead to the setting aside of the decision challenged.

### **CONCLUSION**

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

Pierre Lafontaine,

Member, Appeal Division