



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Y. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 428

Tribunal File Number: AD-17-886

BETWEEN:

Y. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 5, 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 October 12, 2017, the General Division of the Tribunal determined that the Applicant had received earnings from her employer while she was receiving benefits and that the Respondent had properly allocated the earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[3] The Applicant requested leave to appeal to the Appeal Division on November 15, 2017, after having received the General Division decision on October 17, 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 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 her application for leave to appeal, the Applicant states that she was being honest by declaring that her job had started on October 9, 2016, and that she did not know that there was a regulation that stated that Employment Insurance benefits would stop the minute she put in hours of employment, but that she needed that money for living expenses. She states that she did not receive any money the day she started working and began receiving earnings only at the end of October 2016. She believes the Regulations are not always just or reasonable.

[10] The General Division concluded that it was the reason or cause for the payment—not the date of the payment—that determined the date from which the allocation had to begin. It concluded that the Applicant's earnings had been correctly allocated to the period she had worked, rather than the date on which she had finally received the money from the employer.

[11] The Tribunal finds that the General Division decision is supported by the Federal Court of Appeal, which, when it comes to allocating earnings, has given instructions to lay emphasis on the reason for which the earnings were paid and not by whom and/or on what date they were paid—*Brulotte, v. Canada (Attorney General)*, 2009 FCA 149; *Canada (Attorney General) v. Roch*, 2003 FCA 356; *Canada (Attorney General) v. King*, [1996] F.C.J. No. 483.

[12] For the above-mentioned reasons, and after reviewing the appeal docket and the General Division decision, and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division