



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. A. v. Canada Employment Insurance Commission*, 2018 SST 299

Tribunal File Number: AD-18-8

BETWEEN:

V. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 28, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal grants leave to appeal to the Appeal Division.

INTRODUCTION

[2] On November 29, 2017, the General Division of the Tribunal found that the Respondent could proceed with the reconsideration of the Applicant's application for benefits within a 72-month timeframe, pursuant to s. 52(5) of the *Employment Insurance Act* (Act). It also found that the sums received by the Applicant constituted earnings under s. 35 of the *Employment Insurance Regulations* (Regulations) and must be allocated according to s. 36 of the Regulations.

[3] The Applicant filed an application for leave to appeal with the Tribunal's Appeal Division on December 29, 2017.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] According to ss. 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), “[a]n 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 leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

ANALYSIS

[7] According to s. 58(1) of the DESD Act, the only grounds of appeal are that:

- 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; and
- 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 her case.

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

[10] This means that the Tribunal must be in a position to determine, in accordance with s. 58(1) of the DESD Act, whether there is a question of law, fact, or jurisdiction that may justify setting aside 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 her application for leave to appeal, the Applicant argues that the General Division erred in law by allowing the Respondent to re-examine her case under s. 52(5) of the Act.

[13] The Applicant argues that the General Division failed to exercise its jurisdiction by refusing to analyze the Respondent's conduct during its investigation, particularly regarding the reconsideration periods.

[14] Upon review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised an issue pertaining to the General Division's interpretation of s. 52(5) of the Act that may justify setting aside the decision under review.

CONCLUSION

[15] The Tribunal grants leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division