



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. J. v. Canada Employment Insurance Commission*, 2017 SSTADEI 165

Tribunal File Number: AD-16-194

BETWEEN:

**S. J.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Mark Borer

DATE OF DECISION: April 25, 2017

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] Previously, a General Division member dismissed the Appellant's appeal.

[3] In due course, the Appellant filed an application for leave to appeal with the Appeal Division and leave to appeal was granted.

[4] This decision was made on the record.

## **THE LAW**

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (the DESDA), 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; 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.

## **ANALYSIS**

[6] As I noted in my decision granting leave to appeal, this is not an ordinary file.

[7] The Appellant in this matter was a member of a large and extremely complex group appeal. I issued a decision in that matter in 2014 (the 2014 decision) which, on consent, resolved the main legal points in dispute and established a special regime for dealing with any outstanding issues. This special regime included generous timelines to request a

reconsideration from the Commission, but it specifically excluded any challenge to the agreed-upon resolution of the main legal issues.

[8] Out of approximately 2,400 initial appellants who were given access to this special regime, four (4) have requested leave to appeal to the Appeal Division. This is one of those appeals.

[9] Beyond the deadline set out in the 2014 decision, the Applicant attempted to avail herself of the special regime. The Commission, noting the missed deadline, refused to reconsider the Applicant's file. The General Division upheld that determination, substantially for the same reasons.

[10] In her application for leave to appeal, the Applicant submitted that she did not receive a copy of the 2014 decision because she had moved. She stated that she had updated "the government" as to her new address, so this was not her fault.

[11] Essentially, the Applicant argued that because neither her own counsel nor the Tribunal had ever successfully communicated the 2014 decision to her, natural justice required that she be granted an extension of time to access the special regime authorized by the 2014 decision. On that basis, I granted leave to appeal.

[12] The Appellant did not make any further submissions in response to leave to appeal being granted.

[13] For their part, the Commission accepts that I have the discretionary power (according to s. 3 of the *Social Security Tribunal Regulations*) to extend the procedural deadlines set out in the 2014 decision if I find that special circumstances exist. However, they note that the Appellant appears to be attempting to launch an impermissible collateral attack on the substance of the 2014 decision rather than arguing that the 2014 decision has been improperly applied to her specific case. Because of this, they in effect argue that there would be no value in extending the Appellant's deadlines even if I were to find that special circumstances existed because any such reconsideration was destined to fail.

[14] The purpose of the special regime established in the 2014 decision (found at GD3-19) and consented to by the parties, was to create a method by which each claimant's individual circumstances could be examined to ensure that the 2014 decision had been correctly applied and that any issues particular to an individual appellant that were not covered by the 2014 decision could be canvassed.

[15] Examples of potential issues (found at paragraph 20, sub-heading 4 of the 2014 decision) included such things as incorrect calculations, an incorrect start date for the allocation and the wrong normal weekly earnings. With the parties' full consent, the finding that "the moneys at the heart of this appeal are earnings and must be allocated in accordance with s. 36(9) and (10) of the [*Employment Insurance Regulations*]" was specifically excluded from reconsideration (at sub-heading 6).

[16] The Appellant, in her various written and oral submissions, stated that she did not have the ability to repay her assessed overpayment. She also told the General Division that it was the Commission's fault for paying her benefits that she was not entitled to, and that her union or the government should be responsible for her debt because it was their error.

[17] In sum, the Appellant argues that (contrary to the 2014 decision) she should not have to repay the overpayment but does not allege that the 2014 decision was applied to her file incorrectly or that there are any outstanding issues to be resolved. I note that the General Division member came to the same conclusion (at paragraph 40 of her decision) for substantively the same reasons as I have and addressed, in considerable detail, each point raised by the Appellant.

[18] These submissions represent an impermissible collateral attack on the 2014 decision, rather than a genuine attempt to take advantage of the special regime. It therefore follows that if the Appellant's reconsideration request was permitted to go forward, it would inevitably fail because neither the Commission nor the Tribunal has the jurisdiction to do as the Appellant asks.

[19] I am sympathetic to the Appellant with respect to her financial situation, but I have no jurisdiction to write off her debt. Nor do I have any jurisdiction (or desire) to interfere with the substance of the 2014 decision. As the Commission has correctly noted, that power presently lies solely with the Federal Court and the Federal Court of Appeal respectively.

[20] Therefore, having found that the Appellant's appeal is actually a collateral attack on the 2014 decision, that the Appellant has not set out any error in the manner in which the 2014 decision was applied to her specific circumstances, and that she has not suggested that any specific legal or factual issue remains to be resolved, I decline to exercise my discretion to extend the deadlines set out in that decision. I do this because of my view that even if the Appellant was permitted to take advantage of the special regime her appeal would inevitably fail.

[21] This appeal cannot succeed.

## **CONCLUSION**

[22] For the above reasons, the appeal is dismissed.

*Mark Borer*

Member, Appeal Division