



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. E. v. Canada Employment Insurance Commission*, 2017 SSTADEI 425

Tribunal File Number: AD-17-562

BETWEEN:

G. E.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 5, 2017

REASONS AND DECISION

INTRODUCTION

[1] On July 13, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Canada Employment Insurance Commission (Commission) had correctly allocated the gross proceeds of a settlement under the *Employment Insurance Act*. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on August 9, 2017.

ISSUE

[2] The Member must decide whether the appeal has a reasonable chance of success.

THE LAW

[3] 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 be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[4] Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[5] According to subsection 58(1) of the DESD Act, the following are the only grounds of appeal:

- (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.

SUBMISSIONS

[6] The Applicant submits that the gross amount of his wrongful dismissal settlement included compensation for being falsely accused (AD1B-1) or embarrassment (AD1-2) and punitive damages (also AD1-2) as well as for lost wages and benefits. The General Division considered the entire amount of the settlement to be earnings, which the Applicant argues is an error of law.

[7] The Applicant also argues that the General Division erred in accepting the Commission's use of the gross amount for allocation purposes, and that the overpayment that resulted from the allocation has caused him financial hardship.

ANALYSIS

[8] The Applicant now argues that a portion of his settlement was something other than earnings. He did not argue—before the General Division—that any part of his settlement was anything other than earnings, or that any part should not be allocated for that reason. Nor had this issue been raised in his reconsideration application.

[9] Furthermore, there was no evidence before the General Division on which it might have found some portion of the settlement to be something other than earnings. The General Division clearly canvassed this issue with the Applicant at the hearing, and the Applicant confirmed that the entire settlement was for lost wages. This is supported by the actual terms of the settlement agreement at GD3-19 where the settlement amount is said to be paid, “[...] to compensate for lost wages during the period of termination.”

[10] I have reviewed the record including the settlement agreement, the allocation schedule, and the audio recording of the Applicant's testimony at the General Division hearing. I have also considered both the Applicant's and the Respondent's submissions. In finding the entire amount of the settlement to be earnings for the purpose of the allocation, the General Division member considered and correctly apprehended all the evidence before her, and she has correctly applied the law to confirm that the entire amount of the settlement should be allocated as earnings. The Applicant has not raised an arguable case on these grounds.

[11] The Applicant also argues, as he argued earlier at the General Division, that he should not have been required to repay more than the actual amount he received in benefits. He does not identify any error on the part of the General Division but appears to simply disagree with the result.

[12] The Applicant is correct that the Commission has required him to repay an amount that is in excess of the amount that he actually received from the settlement. This resulted from the employer having withheld certain deductions from the settlement and paying him only the net amount. The Commission had allocated the gross settlement amount (i.e. the total amount before deductions) even though the Applicant was not actually paid the gross amount. The larger gross settlement amount had to be allocated over a greater number of weeks, and therefore the Applicant was obliged to repay benefits for a greater number of weeks.

[13] While this undoubtedly caused the Applicant hardship, the General Division must apply the law. It cannot relieve the Applicant from the effect of the allocation on the basis that it has caused him financial hardship. At paragraph 23, the General Division reviews case law from the Federal Court of Appeal and concludes that the Commission was correct to allocate the gross proceeds of the settlement. I accept that the decisions cited by the General Division represent the current state of the law respecting the allocation of settlement proceeds, and that it is gross proceeds that are to be allocated. I also accept that the General Division correctly applied the law in upholding the Commission's allocation of the gross proceeds of the settlement.

[14] For all the above reasons, I find that the Applicant has no reasonable chance of success.

CONCLUSION

[15] The Application is refused.

Stephen Bergen
Member, Appeal Division