



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 427

Tribunal File Number: AD-17-861

BETWEEN:

**L. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 5, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On September 28, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) confirmed that the Applicant's settlement payout was considered earnings and properly allocated. The General Division declined jurisdiction over the question of the Applicant's final overpayment amount. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on November 2, 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] The only grounds of appeal are those set out in subsection 58(1) of the DESD Act. They are as follows:

- (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 General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. It is not clear from the Applicant's submissions why he believes the General Division to have made such an error. However, I note that the principal issue of concern to the Applicant is that it was unfair for the Commission to first pay him benefits in error and to then seek to recover \$1,048.00 of those benefits.

[7] The Applicant also suggests that the General Division made an erroneous finding of fact. The Appellant does not appear to dispute that the final allocation was correctly made but he submits that the General Division failed to take into account the fact that the Commission was responsible for the improper allocation that resulted in his overpayment.

[8] The Respondent did not file written submissions.

## **ANALYSIS**

[9] As set out in paragraph 1 of the decision, the General Division considered the appeal to arise from the reconsideration decision of December 30, 2016.

[10] However, also at paragraph 1, the General Division describes the December 30, 2016, decision as a reconsideration of the initial decision of April 12, 2016. The April 12, 2016, decision determined that \$50,415.00 of the settlement agreement was to be considered income and would be allocated over the period from March 29, 2015, to December 12, 2015. The General Division described the December 30, 2016, decision as maintaining the April 12, 2016, decision.

[11] In fact, the December 30, 2016, reconsideration decision described itself as a reconsideration of a November 19, 2016, decision. This is consistent with the application for reconsideration filed by the Applicant with the Commission where the decision he requests to be reconsidered is identified as a November 19, 2016, letter.

[12] Further, the reconsideration decision did not maintain the April 12, 2016, decision; it reallocated a different portion of the settlement (\$55,979.15) over a different period (March 1, 2015, to December 5, 2015).

[13] My reading of paragraph 1 of the decision suggests that the General Division may have misapprehended the decision that was being reconsidered. The General Division's finding that it did not have jurisdiction over the Applicant's overpayment of \$1,048.00 is dependent on a correct understanding of the decision under appeal and it is therefore possible that the General Division erred in refusing jurisdiction per paragraph 58(1)(a) of the DESD Act.

[14] I find therefore that the appeal has a reasonable chance of success.

[15] Having found a reasonable chance of success in relation to one ground, it is unnecessary for me to consider any other grounds of appeal raised by the Applicant (*Mette v. Canada [Attorney General]*, 2016 FCA 276).

## **CONCLUSION**

[16] The Application is granted.

[17] The Applicant is not restricted from arguing any, or additional, grounds of appeal in pursuing his appeal on the merits of the case.

[18] This decision granting leave to appeal does not presume the result of the appeal on the merits.

Stephen Bergen  
Member, Appeal Division