[TRANSLATION]

Citation: *S. M. v. Canada Employment Insurance Commission,* 2018 SST 175

Tribunal File Number: AD-17-964

BETWEEN:

S. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: February 20, 2018

DECISION AND REASONS

DECISION

[1]   The application for leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on September 20, 2017, is refused.

OVERVIEW

[2]   The Applicant, S. M., applied for and received Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), adjusted and allocated the Applicant's earnings, determined that the Applicant had been overpaid and had made false declarations, imposed a penalty, and issued a notice of violation.

[3]   The Applicant argues that he did not make false declarations and that someone else made these declarations without his knowledge.

[4]   The Applicant appealed the Commission's decision. The General Division found that the Applicant had not consciously made false declarations and that it was not justifiable to impose a penalty on or to issue a notice of violation to the Applicant.

[5]   The Applicant argues in his application for leave to appeal that the General Division withdrew the penalty and the notice of violation, that he did not receive an overpayment in the amount of $18,000, and that he should not have to repay this sum. He argues that he has been a victim of fraud committed by his former spouse, that she received these benefits, and that she should have to repay them.

[6]   The appeal has no reasonable chance of success because the Tribunal cannot address the issue of fraud between the Applicant and a third party; the Tribunal has no discretion beyond that which is given to it by its home statute.

ISSUE

[7]   Is it possible that the General Division erred by not addressing the overpayment amount or the person responsible for repaying this sum?

ANALYSIS

[8]   An applicant must request and obtain leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can be considered only if leave to appeal is granted.[1]

[9]   Before leave to appeal can be granted, I must decide whether the appeal has a reasonable chance of success. In other words, are there grounds of appeal that might give the appeal a chance of success?[2]

[10]   Leave to appeal is refused if the Appeals Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error. The only grounds of appeal are that[4] the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

Is it possible that the General Division erred by not addressing the overpayment amount or the person responsible for repaying this sum?

[11]   The Applicant argues that the General Division should have asked his former spouse to repay the amount in question. He maintains that she was the one who collected the benefits by fraud; she modified the benefit deposits so that they would be paid into her bank account.

[12]   However, I notice in reading the General Division decision that it notes the following: [translation] "The Tribunal recognizes that the Appellant has withdrawn the claims regarding the adjustment and allocation of sums received as earnings under sections 35 and 36 of the Regulations."[5] Before the General Division, the Applicant did not dispute having received these

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[1] *Department of Employment and Social Development Act* (DESD Act), at s. 56(1) and 58(3).
[2] *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.
[3] DESD Act at s. 58(2).
[4] DESD Act at s. 58(1).
[5] General Division decision at para. 51.

sums as earnings or the allocation of these sums by the Respondent.[6] The allocation of these sums resulted in an overpayment.

[13]   The Applicant testified that he never received the sums paid by the Commission after May 2016. He testified that the sums were deposited into an account under his former spouse's name.[7]

[14]   The General Division noted that its role is limited to evaluating whether, on a balance of probabilities, the Applicant [*sic*] knowingly made these false declarations regarding his earnings to the Commission. Regarding the overpayment, the General Division found that this allocation resulted in an overpayment that the Applicant must repay.[8] The General Division did not err in its findings.

[15]   The Tribunal does not have the jurisdiction to provide the requested remedy: an order under which the overpayment must be repaid by the Applicant's former spouse. Neither the General Division nor the Appeal Division has powers beyond those attributed by their home statutes.

[16]   I have also reviewed the evidence in the record. There is no evidence showing that the General Division overlooked or misinterpreted important evidence. I do not believe that the General Division failed to observe a principle of natural justice or that it acted beyond or refused to exercise its jurisdiction when coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[17]   For these reasons, I find that the appeal does not have a reasonable chance of success.

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[6] General Division decision at para. 15.
[7] General Division decision at paras. 16 and 29.
[8] General Division decision at para. 35.

CONCLUSION

[18]   Leave to appeal is refused.

                                                            Shu-Tai Cheng
                                                    Member, Appeal Division

REPRESENTATIVE:	S. M., not represented