



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. B. v. Canada Employment Insurance Commission*, 2018 SST 274

Tribunal File Number: AD-17-902

BETWEEN:

**E. B.**

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: Pierre Lafontaine

Date of Decision: March 26, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **INTRODUCTION**

[2] On November 15, 2017, the Tribunal's General Division determined that the Applicant had received workers' compensation benefits during a period in which he received benefits and that the Respondent had properly allocated these earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations*.

[3] The Applicant requested leave to appeal to the Appeal Division on November 24, 2017.

### **ISSUE**

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

### **THE LAW**

[5] 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 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 "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

### **ANALYSIS**

[7] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- 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.

[8] Before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[9] In his application for leave to appeal, the Applicant states that he has done nothing wrong and that he is paying for someone else's mistake. He adds that another person in his situation did not have to pay back the amounts received. He argues that everyone should be treated equally and that the Respondent should be liable for its mistakes.

[10] The Tribunal sent the Applicant a letter dated November 30, 2017, requesting that he explain in detail his grounds of appeal.

[11] In his reply to the Tribunal, the Applicant reiterated that another person in his situation did not have to pay back the money he had received. The Applicant said that he should not have to suffer because of the fact that the Respondent's representatives are not properly trained and make costly mistakes. He feels the General Division erred by not making the Respondent liable for its mistakes.

[12] The General Division found that because the Respondent's agent had given the Applicant misleading/incorrect information, he had received benefits to which he was not entitled.

[13] The General Division concluded from the evidence that the Respondent had correctly determined that the workers' compensation benefits paid to the Applicant were

earnings for Employment Insurance purposes and that it had correctly allocated them as such, which resulted in the overpayment in question.

[14] The Federal Court of Appeal has clearly and consistently found that an applicant who receives money to which he or she is not entitled, even as a result of a mistake by the Respondent, is not excused from having to repay it [*Lanuzo v. Canada (Attorney General)*, 2005 FCA 324].

[15] Unfortunately for the Applicant, he has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified any errors of 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, in coming to its decision.

[16] For the above-mentioned reasons, and after reviewing the appeal docket and the General Division's decision as well as considering the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

[17] If the Applicant wants to request a write-off of his debt, a formal request should be made directly to the Respondent so that a decision can be rendered on that issue.

## **CONCLUSION**

[18] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division