



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. N. C.*, 2018 SST 402

Tribunal File Number: AD-18-165

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

N. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 11, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Respondent, N. C. (Claimant), made an initial claim for Employment Insurance benefits beginning August 17, 2014. The Applicant, the Canada Employment Insurance Commission (Commission), adjusted the Claimant's earnings for the weeks from August 31, 2014, to December 28, 2014, because the Claimant operated a business. The Claimant requested that the Commission review her case. The Commission modified the allocation of the business's earnings for the weeks from August 31, 2014, to December 28, 2014, and stated that the application of business income for the weeks from August 31, 2014, to September 30, 2014, had no impact because the Claimant did not receive benefits for those weeks. The Claimant appealed this decision to the General Division.

[3] The General Division determined that it was unnecessary to allocate the Claimant's earnings because the business reported losses during the period in question.

[4] The Commission now seeks leave to appeal the General Division's decision.

[5] In support of its application for leave to appeal, the Commission argues that the General Division erred, because the evidence actually shows that for the period in question from July 1, 2014, to June 30, 2015, the company generated net profits of \$31,040. It argues that the General Division must therefore allocate earnings under the *Employment Insurance Regulations* (Regulations).

[6] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error that may give the appeal a reasonable chance of success.

[7] The Tribunal grants leave to appeal because at least one of the Commission's grounds of appeal may have a reasonable chance of success on appeal.

ISSUE

[8] In its grounds of appeal, does the Commission address a reviewable error that the General Division committed that may have a reasonable chance of success on appeal?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal for a General Division decision. These reviewable errors are the following: 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Commission to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Commission does not have to prove its case; rather, it must establish that its appeal has a reasonable chance of success. In other words, it must establish that there is a reviewable error on the basis of which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Commission's grounds of appeal has a reasonable chance of success.

[12] To do so, the Tribunal must, in accordance with s. 58(1) of the DESD Act, be in a position to determine whether there is a question of principles of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

ISSUE: In its grounds for appeal, does the Commission address a reviewable error committed by the General Division that might give the appeal a reasonable chance

of success?

[13] In support of its application for leave to appeal, the Commission cites ss. 58(1)(b) and 58(1)(c) of the DESD Act.

[14] The Commission argues that the General Division erred by finding, based on the evidence, that no allocation of the Claimant's earnings could be carried out because the company had reported losses during the period in question.

[15] The Commission submits that the fiscal years on which the General Division relied to justify the company's annual net losses are the years from July 1, 2012, to June 30, 2013, and from July 1, 2013, to June 30, 2014. The Commission also submits that because the adjustment of earnings in this case deals with the period from August 31, 2014, to January 3, 2015, the General Division committed an error by not considering the financial year that includes the period in question: July 1, 2014, to June 30, 2015.

[16] The Commission submits that the evidence shows that for the period from July 1, 2014, to June 30, 2015, the company generated net returns of \$31,040. The Commission submits that the General Division should have allocated earnings, in accordance with the Regulations.

[17] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Commission has raised a question of fact or law that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Julie Meilleur, Representative for the Applicant
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