



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. A. v. Canada Employment Insurance Commission*, 2018 SST 423

Tribunal File Number: AD-17-961

BETWEEN:

J. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 18, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. A. (Claimant), established a benefit period and began receiving Employment Insurance regular benefits effective June 26, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), therefore determined the Claimant's benefit period to be from June 26, 2016, to June 25, 2017. The Claimant returned to work on September 10, 2016, but was off due to sickness as of November 13, 2016, followed by maternity and parental leaves thereafter.

[3] The Claimant requested that her benefit period established June 26, 2016, be cancelled in favour of one starting November 13, 2016, so that she could receive her full maternity and parental leave entitlement. The Commission initially notified the Claimant that it would grant her request but then, upon review, decided that, pursuant to subsection 10(6) of the *Employment Insurance Act* (Act), the prior benefit period could not be cancelled. The Claimant requested that the Commission reconsider its decision; however, the Commission maintained its original decision.

[4] The Claimant appealed the Commission's decision to the General Division. The General Division concluded that the Claimant's benefit period established June 26, 2016, could neither be cancelled (pursuant to subsection 10(6) of the Act) nor ended on November 13, 2016 (pursuant to subsection 10(8) of the Act). The General Division found that the Claimant was paid the correct number of weeks of parental benefits.

[5] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. She argues that General Division erred in law by not considering that she had been given incorrect information by the Commission. She puts forward that the

Commission should correct the issue by paying her the additional 21 weeks she would have received in maternity benefits, had she not been provided false information.

[6] The Tribunal must decide whether arguably, there is some reviewable error of the General Division upon which the appeal might succeed.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that 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 had 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 Claimant 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 Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before leave can be granted, the Tribunal must 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.

[12] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

[13] In her application for leave to appeal, the Claimant states that the Commission provided her with false information, resulting in a financial loss on her part. She argues that the legislation should include a clause for instances in which the Commission provides false information about the services they provide and the services about which they should be knowledgeable.

[14] The Tribunal wrote a letter to the Claimant requesting that she provide a detailed explanation of her grounds of appeal. In her reply, the Claimant reiterated that the Commission provided her with false information that led to a financial loss on her part. She argues that the General Division erred when it did not consider this fact in its decision. The Claimant requests that the Tribunal render its decision so that she can continue to the next step.

[15] The General Division concluded that the benefit period could neither be cancelled, since the Claimant did not meet the conditions prescribed in subsection 10(6) of the Act, nor be ended on November 13, 2016, pursuant to subsection 10(8) of the Act.

[16] The General Division did consider the Claimant's argument regarding the false information that she received from the Commission and concluded that the Commission and the Tribunal did not have the power to depart from the provisions of the Act, for any reason, no matter how compelling the Claimant's circumstances.

[17] It is well-established case law that any commitment that the Commission or its representatives make, whether in good or bad faith, to act in a way other than that which is prescribed by the Act, is absolutely null and void.¹

[18] In her application for leave to appeal, the Claimant has not identified any reviewable errors, such as errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. She has neither identified errors in law nor identified 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.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. A., self-represented
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¹ *Granger v. Canada Employment and Immigration Commission*, [1986] 3 FC 70, 1986 CanLII 3962 (FCA).