



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2018 SST 496

Tribunal File Number: AD-18-9

BETWEEN:

J. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 4, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. M. (Claimant), established a claim for Employment Insurance benefits. His claim was approved and benefits were paid. The Respondent, the Canada Employment Insurance Commission (Commission), issued a notice of allocation, overpayment, penalty and violation for this claim for benefits, finding that the Claimant had made false representations in his reports regarding certain weeks. The Claimant did not declare his work earnings during these weeks. The Claimant requested a reconsideration of this decision, and the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant knew he was providing false information and that the Commission exercised its discretion in a judicial manner when it imposed a penalty and issued a notice of violation.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. The Claimant argues that he received a notice from the Commission that he still owes the full amount of the penalty (\$2876), which goes against the decision of the General Division.

[5] The Tribunal sent a letter to the Claimant requesting that he file his grounds of appeal in accordance with s. 58 of the *Department of Employment and Social Development Act* (DESD Act). He did not reply to the Tribunal within the allowed period of time.

[6] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error committed by the General Division.

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

ISSUE

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

[9] Subsection 58(1) of the 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 his case; he 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's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[13] In analyzing the appeal docket, the Commission determined that the Claimant had raised mitigating factors and reduced the penalty by 50% to show a total amount owing of \$1436.

[14] The General Division concluded that the reduced penalty and notice of violation had to stand. However, no change can be made to the amount of the penalty until the end of the appeal procedures of the Applicant. Following the dismissal of the present application for leave to appeal, the Commission will be able to issue a notice to the Claimant in accordance with the General Division's decision.

[15] In his application for leave to appeal, the Claimant has not identified any reviewable errors, such as an error of jurisdiction, or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law, nor has he identified any erroneous findings of fact which 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, after reviewing the appeal docket and the General Division decision, and after considering the claimant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

| | |
|-----------------|-------------------------|
| REPRESENTATIVE: | J. M., self-represented |
|-----------------|-------------------------|