



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. F. v. Canada Employment Insurance Commission*, 2018 SST 604

Tribunal File Number: AD-18-302

BETWEEN:

**M. F.**

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: May 23, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] In recent years, the Applicant, M. F. (Claimant), has submitted four initial claims for Employment Insurance benefits. After reconsidering these applications, the Canada Employment Insurance Commission (Commission) determined that sums the Claimant received retroactively from the CNESST constituted earnings to be allocated over his Employment Insurance benefits. This allocation resulted in an overpayment, which has now been claimed from the Claimant. The Claimant sought reconsideration of the Commission's decision, but the Commission maintained its initial decision. The Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division.

[3] In its decision, the General Division found that the amounts the Claimant received from the CNESST as income replacement benefits constituted earnings. It also found that the Commission allocated the earnings in accordance with the regulatory requirements.

[4] The Claimant now seeks leave to appeal the General Division decision.

[5] In support of his application for leave to appeal, the Claimant argues that the General Division refused to exercise its jurisdiction by not asking the Commission for clarification of the calculations that led to the overpayment. As a result, he could not defend himself properly before the General Division.

[6] The Tribunal must determine whether it is arguable that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal grants leave to appeal because the appeal has a reasonable chance of success based on at least one of the grounds raised by the Claimant.

### **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 *Department of Employment and Social Development Act* (DESDA) sets out 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 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 application for 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. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

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

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

### **Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?**

[13] Among the arguments made in support of his application for leave to appeal, the Claimant argued that he never received explanations for the calculations leading to the amounts required by the Commission, despite a number of requests to that effect. He stressed that even the General Division noted a number of errors and inconsistencies in

the tables prepared by the Commission but said he was powerless to get clarification. The Claimant maintains that the General Division refused to exercise its jurisdiction by making no findings on the Commission's errors and inconsistencies in the calculations. Furthermore, because he was misinformed by the Commission, he could not defend himself properly before the General Division.

[14] 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 Claimant has raised issues of jurisdiction and natural justice that could result in the setting aside of the decision under review.

### **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	M. F., self-represented
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