



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2018 SST 549

Tribunal File Number: AD-18-85

BETWEEN:

**J. M.**

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 17, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, J. M. (Claimant), filed an application for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), notified the Claimant that his wages constituted earnings to be allocated to the period worked. The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[3] The General Division found that the Claimant had earnings that were properly allocated under ss. 35 and 36 of the *Employment Insurance Regulations* (Regulations).

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. The Claimant puts forward that he was working in a toxic work environment where human rights abuses occurred and that he never quit his job. The Claimant alleges that “[his] employment was fraught with abuse upon [his] person, which culminated in an assault on [his] person, a conviction registered against [his] co-worker, all of which initiated this EI claim.”<sup>1</sup> He argues that he did not receive his Record of Employment until eight months had passed, contrary to the requirements of the law. He further adds that it was not his responsibility to verify the authenticity of the documents received by the Commission from the employer.

[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) on the issue of allocation of earnings.

[6] In his reply to the Tribunal, the Claimant essentially refiled his initial application.

[7] The Tribunal must decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might arguably succeed.

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<sup>1</sup> AD1-67

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

## **ISSUE**

**Does the Claimant raise some reviewable error committed by the General Division upon which the appeal might arguably succeed?**

## **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, he must prove 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 s. 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 committed by the General Division upon which the appeal might arguably succeed?**

[13] In this case, the General Division had to decide whether the Claimant had earnings during his benefit period and, if so, whether they were allocated correctly under ss. 35 and 36 of the Regulations. It did not have to decide whether the Claimant had quit his job or whether he had been wrongfully dismissed by his employer.

[14] The Claimant essentially argued before the General Division that he never received any money from the employer into his bank account and that he could not have been paid “regular hours” by his employer because he was on unpaid leave.

[15] The Commission’s evidence is that the employer applied statutory holiday pay and regular pay, to the Claimant’s accrued arrears balances for union fees, pension contributions, and supplemental life insurance while the Claimant was on unpaid leave.

[16] The Claimant submitted paystubs from the employer that show gross wages matching the amounts identified in the employer’s payroll information and provide detailed information about the arrears.

[17] The General Division found that although the Claimant did not receive any money into his bank account because it was applied to accrued arrears, the statutory holiday pay was income arising out of employment. It further found that because the Claimant had not repaid the employer the regular pay for hours that he says he did not work, the regular pay was also income arising out of employment. The General Division concluded that the Claimant’s earnings had been properly allocated by the Commission.

[18] In spite of requests to do so, 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. He 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] In his leave to appeal application, the Claimant has not demonstrated that the hearing process on the issue of allocation of earnings was impaired by the General Division’s decision to proceed with a teleconference hearing.

[20] After consideration of the appeal docket, the General Division decision, and the Claimant's submissions in support of his application for leave to appeal, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

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