



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *Y. P. v. Canada Employment Insurance Commission*, 2018 SST 550

Tribunal File Number: AD-18-114

BETWEEN:

**Y. P.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

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, Y. P. (Claimant), made an initial claim for Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) informed the Claimant that it had reconsidered his application for Employment Insurance benefits because it believed that the Claimant had made false or misleading statements, mainly that he had neglected to report that he was operating a business. A disentitlement was imposed on him. The Claimant asked the Commission to perform a reconsideration, but it maintained its initial decision. The Claimant appealed to the General Division of the Social Security Tribunal of Canada.

[3] Based on the evidence, the General Division determined that the Claimant had not established that his level of involvement in his business was to such a minor extent that it could not be a principal means of livelihood. The General Division found that the presumption had not been overcome and that the Claimant had worked for entire weeks during his period of unemployment.

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

[5] In support of his application for leave to appeal, the Claimant argued that the General Division erred by considering the entire period covered by Employment Insurance rather than the specific periods during which the events occurred.

[6] The Tribunal asked the Claimant in writing to provide detailed explanations for the appeal of the General Division decision. It reminded him that it is not enough to just repeat his testimony before the General Division. The Tribunal did not receive a reply from the Claimant.

[7] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error based on which the appeal has a reasonable chance of success.

[8] The Tribunal refuses leave to appeal because the appeal does not have a reasonable chance of success based on any of the grounds of appeal raised by the Claimant.

### **ISSUE**

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

### **ANALYSIS**

[10] 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 made in a perverse or capricious manner or without regard for the material before it.

[11] 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 establish that there is arguably some reviewable error upon which the appeal might succeed

[12] 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.

[13] 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 justify setting aside the decision under review in accordance with s. 58(1) of the DESD Act.

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

[14] The period in dispute is from November 29, 2012, to March 30, 2013.

[15] Based on the evidence, the General Division found that the Claimant had devoted a considerable amount of time to his business, starting with its creation on December 3, 2012. It also found that he had ordered equipment in December 2012 and taken on significant financial commitments starting in January 2012. It noted that the sales of the business had doubled since its creation.

[16] The General Division noted that the Claimant initially reported to the Commission that he was no longer looking for work after the business's registration and that he was focusing on starting his business. When applying for a reconsideration, he was unable to show that he had been actively looking for a job.

[17] Based on the evidence and in light of the six factors set out in s. 30(3) of the *Employment Insurance Regulations*, the General Division found that the Claimant had not shown that his level of involvement in his business after its creation on December 3, 2012, was of such a minor extent that it could not be his principal means of livelihood.

[18] In support of his application for leave to appeal, the Claimant essentially repeated his version of events, which had already been presented to the General Division for assessment.

[19] Unfortunately for the Claimant, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[20] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issue of law, fact, or jurisdiction that might lead to the setting aside the decision under review.

[21] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

### **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	Y. P., self-represented
-----------------	-------------------------