



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. T. v. Canada Employment Insurance Commission*, 2018 SST 580

Tribunal File Number: AD-18-270

BETWEEN:

**S. T.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

---

Leave to Appeal Decision by: Janet Lew

Date of Decision: May 29, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal is refused.

### **OVERVIEW**

[2] The Applicant, S. T., received regular Employment Insurance benefits between September 14, 2014 and July 25, 2015. However, the Respondent, the Canada Employment Insurance Commission (Commission), subsequently learned that the Applicant had failed to report that he was outside of Canada during the periods from November 18, 2014 to February 10, 2015, and from April 17, 2015 to July 25, 2015. The Applicant acknowledges that he failed to inform the Commission that he was out of the country, but he explains that he overlooked this because of a family emergency. He had to care for his daughter, who was travelling overseas and was severely ill. He had intended to return to Canada as soon as possible, but was unable to leave his daughter alone.

[3] The Commission determined that the Applicant was disentitled to Employment Insurance benefits for both periods when he was outside of Canada because he was not available for work while outside of Canada. The Commission determined that the Applicant was liable for an overpayment for the periods of disentanglement. The Commission found that the Applicant had knowingly made false representations and it imposed a penalty, taking into account the reason for his absence, his “mental state of mind” at the time, and his financial situation. The Commission also issued a notice of violation, classifying the violation as very serious.

[4] The Applicant sought a reconsideration of the Commission’s decision. The Commission maintained its decision. The Applicant appealed the Commission’s reconsideration decision to the Social Security Tribunal’s General Division. The General Division dismissed the Applicant’s appeal of the Commission’s decision, with a modification to the penalty, having found that the Commission did not exercise its discretion in a judicial manner when determining the amount quantum of the penalty.

[5] The Applicant now seeks leave to appeal the General Division's decision, on the basis that the General Division failed to consider all of the evidence before it and, in particular, the fact that his "mistake has been happened under completely difficult situation [*sic*]." From this, it can be inferred that he is requesting that the debt (caused by the overpayment) be forgiven or that there be some leniency shown because of his and his family's circumstances. I must decide whether the appeal has a reasonable chance of success.

[6] I am refusing the application for leave to appeal because I find that the appeal does not have a reasonable chance of success. The Applicant claims that the General Division failed to consider all of the evidence before it, when it clearly did consider it.

### **ISSUE**

[7] Is there an arguable case that the General Division failed to consider all of the evidence before it?

### **ANALYSIS**

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

[9] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal set out under ss. 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey*.<sup>1</sup>

**Is there an arguable case that the General Division failed to consider all of the evidence before it?**

[10] The Applicant submits that the General Division failed to consider all of the evidence before it, and, in particular, the background circumstances (i.e. that he had to be overseas to care for his daughter) that led to his misreporting on the biweekly reports to the Commission that he was not outside of Canada.

[11] I do not see that to be the case. The General Division clearly set out this evidence and considered it in its decision. For instance, at paras. 39 and 44, the General Division noted that the Applicant was outside of Canada to care for his daughter, who was unwell and whom physicians advised should not be left alone. The General Division noted that the Applicant was unable to return to Canada because he was required to be with his daughter at all times. The General Division also noted that these same considerations mitigated the amount of the penalty that was imposed.

[12] Accordingly, I am not satisfied that the appeal has a reasonable chance of success on the basis that the General Division failed to consider all of the evidence before it, when plainly, it did consider it.

[13] The Applicant denies that he intended to make a false statement or that there was any “criminal element” involved in his misreporting on the biweekly reports, but as the General Division noted, intent is irrelevant to the issue of whether a claimant made a false statement.

[14] I have reviewed the underlying record and do not see any indication that the General Division either overlooked or misconstrued important evidence.

[15] Finally, the Applicant is seeking forgiveness of both the debt and the penalty, given his circumstances. However, this does not raise an arguable case under ss. 58(1) of the DESDA. In any event, I have no jurisdiction to forgive or relax the debt or the penalty. I note that, at

---

<sup>1</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

para. 51, the General Division encouraged the Applicant to apply for forgiveness of the debt by contacting the Canada Revenue Agency's debt recovery service. The Applicant may well wish to explore this avenue.

**CONCLUSION**

[16] The application for leave to appeal is refused.

Janet Lew  
Member, Appeal Division

REPRESENTATIVE:	S. T., self-represented
-----------------	-------------------------