



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. F. v. Canada Employment Insurance Commission*, 2018 SST 684

Tribunal File Number: AD-18-362

BETWEEN:

**B. 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: Stephen Bergen

Date of Decision: June 20, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, B. F. (Claimant), left his employment because he suffered from post-traumatic stress disorder and was no longer able to perform his duties. He was originally uncertain how to apply for Employment Insurance benefits because his Record of Employment indicated that he had been laid off due to a shortage of work, and he disagreed with this. After speaking with an agent at Service Canada, he understood that he should apply for regular benefits despite his continued inability to work, and that he should complete his regular reports to indicate a willingness and ability to work. He later obtained a medical note that confirmed his diagnosis and disability and he brought it to a Service Canada agent to have his benefits switched to sickness benefits. When the Respondent, the Canada Employment Insurance Commission (Commission), subsequently discussed the Claimant's circumstances with him, the Claimant confirmed that he had not been able to work since leaving his employment. By this point, the Claimant had received the full 15 weeks of sickness benefits as well as additional weeks of regular benefits.

[3] The Commission informed the Claimant that he would be required to repay all of the benefits that he had received, and the Claimant received a Notice of Debt, which required repayment of both his regular and sickness benefits. He was not assessed a penalty or issued a notice of violation.

[4] The Claimant sought reconsideration of the Commission's decision that declared the overpayment. In the course of its reconsideration process, the Commission informed him that his file had been updated and that he had been relieved of the obligation to repay the sickness benefits. The Commission otherwise maintained its decision and, in a separate decision, the Commission refused the Claimant's request to write off his debt. The Claimant's appealed both the reconsideration decision and the write-off decision to the General Division of the Social

Security Tribunal, but his appeal was dismissed. He now seeks leave to appeal to the Appeal Division.

[5] The Claimant has no reasonable chance of success. He has not made an arguable case that the General Division failed to observe a principle of natural justice or erred in jurisdiction, erred in law, or based its finding on an erroneous finding of fact. The application for leave to appeal is refused.

## **ISSUES**

[6] Is there an arguable case that the General Division based its decision that the Claimant must repay his overpayment on an erroneous finding of fact that it made without regard to the Claimant's evidence that he applied for and obtained regular benefits in accordance with instructions from the Commission?

[7] Is there an arguable case that the General Division refused to exercise its discretion by finding that it did not have the authority to review the Commission's write-off decision?

## **ANALYSIS**

### **General principles**

[8] The Appeal Division's task is more restricted than that of the General Division. The General Division is empowered to consider and weigh the evidence before it and to make findings of fact. The General Division then applies the law to these facts in order to reach conclusions on the substantive issues raised by the appeal.

[9] By way of contrast, the Appeal Division cannot intervene in a General Division decision unless it can find that the General Division has made one of the types of errors described by the grounds of appeal in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act) and set out below:

- 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.

[10] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion.

[11] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal in order to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.<sup>1</sup>

**Is there an arguable case that the General Division failed to consider the Claimant's evidence that the Commission misled or misinformed him during the application process?**

[12] The Claimant has asserted that the General Division failed to observe a principle of natural justice or made a jurisdictional error, erred in law, and based its decision on an erroneous finding of fact. However, the essence of his present appeal is that the General Division ignored or misunderstood the Claimant's evidence of how he was misled or misinformed by the Commission.

[13] Fundamentally, the Claimant does not dispute that he was not entitled to the regular benefits he received. His argument at the General Division was that he should not be required to repay those benefits, because it was the Commission's fault that he received them in the first place.

[14] Regardless of whether the Claimant could establish that the Commission was at fault, the Claimant has admitted to the essential fact by which he was disentitled to benefits, i.e. that he was not capable of and available for work under s. 18(1) of the *Employment Insurance Act* (EI Act) during those weeks in which he received regular benefits. Therefore, there is no arguable case that the General Division erroneously found that he was not entitled to the regular benefits he received.

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<sup>1</sup> *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259

[15] If the Claimant is correct that his application for regular benefits was a result of misinformation he received from Service Canada, he was not denied benefits as a result of that misinformation. Rather, he was given benefits to which he was not entitled and which the Commission is now seeking to recover.

[16] The Commission declared the overpayment because the Claimant was not entitled to the benefits in the first place. Paragraph 43(b) of the EI Act states that a claimant is liable to repay an amount paid by the Commission to the claimant as benefits to which the claimant is not entitled. Subsection 47(1) stipulates that an amount payable under s. 43 is a debt due to the Crown. The role that the Commission may have played in the Claimant's mistaken application and reporting is just not relevant to the Claimant's obligation to repay the overpayment. Therefore, there can be no arguable case that, by not giving due consideration to the Commission's role in the overpayment, the General Division breached natural justice, erred in law, or based its decision on an erroneous finding of fact.

**Is there an arguable case that the General Division refused to exercise its discretion by finding that it did not have the authority to review the Commission's write-off decisions?**

[17] The Claimant requested that the Commission write off the debt in accordance with s. 56 of the *Employment Insurance Regulations*, and the Commission refused. The decision to deny the Claimant's request to write off the overpayment was issued by the Commission the same day as its reconsideration decision, and both were attached to the notice of appeal. It is apparent that the Claimant intended that the General Division consider the matter; however, the General Division found that it did not have the authority to review the Commission's write-off decision.

[18] Unfortunately for the Claimant, the General Division is correct. Section 112.1 of the EI Act states that a decision of the Commission regarding the writing off of an amount payable is not subject to review (or reconsideration) under s. 112. Section 113 of the EI Act authorizes the Social Security Tribunal to consider only those Commission decisions made under s. 112. The write-off decision is not subject to reconsideration, and it is therefore also not appealable to the General Division. There is no arguable case that the General Division refused to exercise its discretion or erred in law by refusing to review the write-off decision.

[19] There is no reasonable chance of success on appeal.

**CONCLUSION**

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

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVE:	B. F., self-represented
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