



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. J. v. Canada Employment Insurance Commission*, 2018 SST 778

Tribunal File Number: AD-18-400

BETWEEN:

D. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 30, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. J. (Claimant), made an initial claim for benefits on September 21, 2014, and September 25, 2015, respectively [*sic*]. On November 6, 2017, the Commission notified the Claimant that it had adjusted her earnings because she had failed to report her employment income for the weeks of December 7, 2014; December 14, 2014; October 18, 2015; October 25, 2015; November 1, 2015; January 17, 2016; and January 24, 2016.

[3] The Claimant does not deny receiving the amounts reported by the employers as wages, but she explains that these amounts should not be allocated to her benefit periods because she acted in good faith, she sought advice from a Commission officer as to how to declare the wages received, and she received information that was incorrect.

[4] The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision. The Claimant appealed this decision to the Tribunal's General Division.

[5] The General Division found that the amounts the Applicant received as wages constituted earnings and that these amounts had been correctly allocated by the Commission to the weeks in which the services were performed.

[6] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[7] In support of her application for leave to appeal, the Claimant highlights that the Commission's representatives misled her. She argues that the Commission's procedures are unclear and that they can limit to some extent the rights of claimants.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that may give the appeal a reasonable chance of success.

[9] 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

[10] In her grounds of appeal, has the Claimant raised a reviewable error made by the General Division that may give the appeal a reasonable chance of success?

ANALYSIS

[11] 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.

[12] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the application for leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably some reviewable error based on which the appeal may succeed.

[13] 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.

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

Issue: In her grounds of appeal, has the Claimant raised a reviewable error made by the General Division that may give the appeal a reasonable chance of success?

[15] In support of her application for leave to appeal, the Claimant argues that she has always been honest in her applications for benefits and claims that she is now being penalized because of the Commission's errors. She also argues that the Commission's procedures are unclear and that they can limit to some extent the rights of claimants.

[16] As the General Division noted, earnings that are payable to a claimant under a contract of employment for the performance of services must be allocated to the period in which the services were performed.

[17] Before the General Division, the Claimant did not dispute that the Commission had correctly allocated the earnings that were payable to her to the period in which the services were performed.

[18] Furthermore, the Federal Court of Appeal has clearly held that a claimant who receives money to which they are not entitled, even as a result of an error on the part of the Commission, is not excused from having to repay it.¹

[19] The Tribunal notes that the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[20] After reviewing the appeal file, the General Division's decision, and the Claimant's arguments, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

¹ *Lanuzo v. Canada (Attorney General)*, 2005 FCA 324

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	D. J., self-represented
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