



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *E. K. v. Canada Employment Insurance Commission*, 2018 SST 766

Tribunal File Number: AD-18-111
AD-18-112
AD-18-113

BETWEEN:

E. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 27, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Respondent, the Canada Employment Insurance Commission (Commission), declared the Applicant, E. K. (Claimant), ineligible for benefits for travelling outside Canada during the periods from July 14 to August 28, 2015, and from August 16 to 26, 2016. The Commission also decided that the Claimant was ineligible for benefits during the periods from July 14 to August 28, 2015, and from August 16 to 26, 2016, because he did not show that he was available to work. It also imposed a penalty on the Claimant. The Claimant filed a request for reconsideration of the Commission's decisions, but the Commission upheld its initial decisions. The Claimant appealed to the Tribunal's General Division.

[3] The General Division concluded that the Claimant was entitled to benefits from July 14, 2015, to August 3, 2015, because he proved his absence from Canada fell under one of the exceptions in the *Employment Insurance Regulations* (Regulations).

[4] The General Division also found that the Claimant had not shown that his absences from Canada—from August 4 to 28, 2015, and from August 16 to 26, 2016—fell under one of the reasons set out in the Regulations and that he was available to work. Finally, the General Division found that the Commission did not exercise its discretionary power in a judicial fashion when it imposed a penalty on the Claimant in the file GE-18-1184. The appeal regarding this issue was allowed in part and the penalty was reduced.

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

[6] In support of his application for leave to appeal, the Claimant wishes to insist on his vulnerability to the law, his precarious financial situation, and his status as an immigrant who is still working to integrate into society since his arrival in Canada ten

years ago, in spite of his advanced education. He submits that the General Division erred by finding that he should know the law, considering his advanced education. He also submits that he still has not completed his Employment Insurance declarations because he knew that he did not know that he was entitled to these benefits and that it should reduce his debt to the Commission.

[7] On May 23, 2018, the Tribunal asked the Claimant in writing to provide his detailed grounds of appeal in support of the application for leave to appeal under s. 58(1) of the *Department of Employment and Social Development Act (DESDA)* no later than June 22, 2018. The Applicant did not reply to the Tribunal's request.

[8] On June 26, 2018, the Tribunal contacted the Applicant to explain to him the contents of the letter dated May 23, 2018. The Applicant then agreed to express his grounds to the Tribunal. By July 26, 2018, the Applicant still had not sent his grounds of appeal to the Tribunal.

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

[10] The Tribunal refuses leave to appeal because the Claimant has raised [*sic*] at least one ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[11] In his grounds of appeal, has the Claimant raised a reviewable error committed by the General Division that may have a reasonable chance of success on appeal?

ANALYSIS

[12] Subsection 58(1) of the DESDA sets out the only grounds of appeal of a General Division decision. These reviewable errors are the following: 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.

[13] 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, but he must establish that his appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[14] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's grounds of appeal has a reasonable chance of success.

[15] 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 justify setting aside the decision under review.

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

[16] In support of his application for leave to appeal, the Claimant wishes to insist on his vulnerability with regard to the law, his precarious financial situation, and his status as an immigrant who is still working to integrate into society since his arrival in Canada ten years ago, in spite of his advanced education. He submits that the General Division erred by finding that he should know the law, considering his advanced education. He also submits that he still has not completed his Employment Insurance declarations because he knew that he did not know that he was entitled to these benefits and that it should reduce his debt to the Commission.

[17] After hearing the Claimant in person, the General Division found that he had not shown that his absences from Canada—from August 4 to 28, 2015, and from August 16 to 26, 2016—fell under the grounds set out in the Regulations and that he was available to work.

[18] The General Division also found that the Claimant had knowingly made false or misleading declarations and that it was reasonable to impose a penalty on him because he did not declare that he was working or visiting outside of Canada because he knew that by responding “yes” to the questions, the Commission would stop paying benefits to him.

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

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

[21] Upon review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no chance 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:	E. K., self-represented
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