



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *R. T. v. Canada Employment Insurance Commission*, 2018 SST 799

Tribunal File Number: AD-18-397

BETWEEN:

R. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 7, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. T. (Claimant), worked as a forestry worker for the X and the X. The Respondent, the Canada Employment Insurance Commission (Commission), submits that the Claimant did not declare all of the income that he received during his Employment Insurance benefit periods. As a result, he made false declarations to the Commission during five (5) benefit periods between 1999 and 2004. The Commission sought to recover the excess payments and imposed a penalty on the Claimant.

[3] The Claimant requested reconsideration of this decision on the grounds that the Commission based its claim that he had made false statements on erroneous information and that it erred in its calculation of his income during the period in question. The Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant's undeclared income during the periods in question constituted income under s. 35(2) of the *Employment Insurance Regulations* (Regulations) and that the Commission had allocated his earnings correctly under s. 36(4) of the Regulations. It also found that the Claimant had knowingly made false declarations during the benefit weeks and that the Commission exercised its discretionary power judicially.

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

[6] In support of his application for leave to appeal, the Claimant argued that the General Division erred by failing to take into account the context of the Claimant's initial statement. He also submits that the General Division based its decision on facts that the Commission had not put into evidence and that it ignored some of the Commission's

admissions that were favourable to the Claimant. Finally, he argued that the General Division erred in fact or in law regarding the allocation of the earnings.

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

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

ISSUE

[9] 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

[10] 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.

[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, 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.

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

[14] In support of his application for leave to appeal, the Claimant argued that the General Division erred in law by founding the entirety of its decision on the Claimant's initial statement without considering the statement's context, contrary to the requirements of the case law.

[15] He also submits that the General Division based its decision on facts that the Commission did not put into evidence and that it ignored some of the Commission's admissions that were favourable to the Claimant.

[16] Finally, he submits that the General Division erred in fact or in law regarding the allocation of earnings by focusing on the question of whether the Claimant worked during the weeks in question, rather than on the income he actually earned.

[17] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Claimant raises a question that may lead to the setting aside of the decision under review.

CONCLUSION

[18] The Tribunal grants leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Sylvain Bergeron, L.A.S.T.U.S.E. du Saguenay, Applicant's representative
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