



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. D. v. Canada Employment Insurance Commission*, 2018 SST 809

Tribunal File Number: AD-18-419

BETWEEN:

D. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 15, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. D. (Claimant), made an initial claim for Employment Insurance (EI) sickness benefits. The Respondent, the Canada Employment Insurance Commission (Commission), mistakenly increased the Claimant's level of benefits based on duplicate Records of Employment (ROE) and paid the difference in benefits to the Claimant. Shortly afterwards, the Commission reduced the level of benefits to its previous level and assessed an overpayment. The Claimant requested a reconsideration of this decision, and the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had an obligation to return the money to the Commission because he had received money by way of benefits to which he was not entitled. It determined that only the Federal Court of Canada has jurisdiction to hear an appeal on the issue of write-offs. The General Division dismissed the appeal with a recommendation to the Commission to write off the debt.

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

[5] In support of his application for leave to appeal, the Claimant put forward that the Phoenix system created a phantom Record ROE that did not correspond with the other two ROEs issued by the employer. In fact, the ROE in question had numerous errors and should not have been considered by the Commission. The Claimant did not lie or try to defraud the Canadian government. This situation was the result of an ROE derived from a broken-down computer mainframe and the following errors by the Commission.

[6] The Tribunal sent the Claimant a letter requesting a detailed explanation of his grounds of appeal regarding the benefit rate. The Tribunal also advised him that it did not have jurisdiction to write off his debt.

[7] The Claimant replied that the debt was created by the employer and the Commission. He believes the outstanding debt is the responsibility of the employer who issued the incorrect ROE to the Commission, not his. If the Commission had contacted him sooner, there would not have been any overpayment.

[8] The Tribunal must decide whether there is an arguable case that the General Division has committed a reviewable error upon which the appeal might succeed.

[9] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUES

[10] Did the Claimant file his application for leave to appeal on time?

[11] Does the Claimant raise some reviewable error committed by the General Division upon which the appeal might arguably succeed?

ANALYSIS

[12] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies 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 had 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; instead, he must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, he must establish that there is arguably some reviewable error upon which the appeal might succeed.

[14] Therefore, before leave can be granted, the Tribunal must be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons 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 DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Issue 1: Did the Claimant file his application for leave to appeal on time?

[16] The Tribunal finds that the Claimant did not file his appeal within the legal timeframe.

[17] The Claimant states that he lives with mental illness and that he finds it hard to focus and concentrate on matters that cause him stress and anxiety, such as this appeal. He states that he did not have all the information he needed to file his appeal within the legal timeframe.

[18] In the present circumstances, the Tribunal finds that it is in the interests of justice to grant the Claimant's request for an extension of time to file his application for leave to appeal without prejudice to the Commission.¹

Issue 2: Does the Claimant raise some reviewable error committed by the General Division upon which the appeal might arguably succeed?

[19] In support of his application for leave to appeal, the Claimant put forward that the Phoenix system created an incorrect ROE that did not correspond with the other two

¹ *X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

ROEs issued by the employer. In fact, the ROE in question had numerous errors and should not have been considered by the Commission. The Claimant did not lie or try to defraud the Canadian government. This situation was the result of an ROE derived from a broken-down computer mainframe and the following errors by the Commission.

[20] The Tribunal sent the Claimant a letter requesting a detailed explanation of his grounds of appeal regarding the benefit rate. The Tribunal also advised him that it did not have jurisdiction to write off his debt.

[21] The Claimant replied that the debt owing was created by the employer and the Commission. He believes the outstanding debt outstanding is the responsibility of the employer who issued the incorrect ROE to the Commission, not his. If the Commission had contacted him sooner, there would not have been any overpayment. He did nothing wrong and did not create this predicament. An EI representative told him that the money was his, so he went out and paid bills because he had fallen behind while he collected EI benefits.

[22] The undisputed facts before the General Division show that the Commission had initially and correctly calculated the Claimant's weekly benefit rate at \$313.00, based on the criteria set out in s. 14 of the *Employment Insurance Act*. An additional ROE was issued in error through the Government of Canada's Phoenix pay system. The recalculation of the benefit rate resulted from the system not recognizing that the first and third ROE were from the same employer, due to the different CRA numbers, so the earnings of both ROEs were used to recalculate the benefit rate at \$537.00. The Claimant received benefits to which he was not entitled, which resulted in the overpayment.²

[23] Although the Tribunal is sympathetic to the Claimant's situation, the Federal Court of Appeal has clearly and constantly decided that an applicant who receives money to which he is not entitled, even following a mistake by the Commission or an employer, is not excused from having to repay it.³

² Notice of debt of March 4, 2017.

³ *Lanuzo v. Canada (Attorney General)*, 2005 FCA 324.

[24] In his application for leave to appeal, the Claimant has not identified any reviewable errors, such as issues of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has also not identified any errors in law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

[25] For the above-mentioned reasons and after a review of the appeal docket and the General Division decision and consideration of the Claimant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

[26] Should the Claimant want to request a write-off of his debt, he should make a formal request directly to the Commission so that a decision can be rendered on that issue.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	D. D., self-represented
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