



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. J. v. Canada Employment Insurance Commission*, 2018 SST 790

Tribunal File Number: AD-18-401

BETWEEN:

**D. J.**

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: Shu-Tai Cheng

Date of Decision: August 8, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on May 23, 2018, is refused.

### **OVERVIEW**

[2] The Applicant, D. J., applied for and received Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), readjusted the Applicant's earnings because she had received sums from her employers that she had not declared. Following this readjustment, the Commission notified the Applicant that she had to repay some of the benefits she had received.

[3] The Applicant submits that the sums that she received should not have been allocated to the benefit periods because she acted in good faith and because she contacted the Commission for information in order to complete the forms correctly.

[4] The Applicant appealed the Commission's decision. The General Division found that the Applicant received salary for certain weeks when she had not declared any salary and that the Commission had allocated these sums correctly.

[5] In her application for leave to appeal, the Applicant submits that she received erroneous information from an agent of the Commission and that it was following this information that led to an overpayment being generated.

[6] The appeal has no reasonable chance of success because the Applicant has not raised any argument that the General Division committed an error.

### **ISSUE**

[7] Is there an arguable case that the General Division erred by finding that the Commission had correctly allocated the sums that the Applicant received?

## ANALYSIS

[8] An applicant must be granted leave to appeal a decision rendered by the General Division. An appeal may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.<sup>1</sup>

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the appeal might succeed?<sup>2</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error. The only reviewable errors are the following:<sup>4</sup> 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.

### **Is there an arguable case that the General Division erred by finding that the Commission had correctly allocated the sums that the Applicant received?**

[11] The Applicant submits that the General Division should have considered that an agent of the Commission gave her bad advice. She submits that this agent told her that she should not have any problems if she did not work more than 30 weeks per year, but the agent refused to confirm this information in writing.

[12] However, upon reading the General Division decision, I note that it includes the following:

[translation] ... but [the Applicant] explains that these sums should not be allocated to the benefit periods because she acted in good faith, that she sought information from an agent of the Commission in order to better

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<sup>1</sup> *Department of Employment and Social Development Act* (DESDA) at ss. 56(1) and 58(3).

<sup>2</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.

<sup>3</sup> DESDA, at s. 58(2).

<sup>4</sup> DESDA, at s. 58(1).

understand how to declare the salary received, and that she had received erroneous information.<sup>5</sup>

Furthermore, the General Division determined that:

[translation]

Though the Tribunal had heard the Appellant's arguments regarding the financial troubles that she has experienced and though it has taken into consideration her disappointment at not receiving adequate information from an agent of the Commission that would enable her to adequately declare her salary, the Tribunal has no choice but to apply the Act. The Appellant is responsible for declaring all of the salary that she receives, and though it understands that she took care to correctly declare the amounts received and that the amounts of certain weeks may overlap, the evidence shows that the Appellant had not declared any salary for the entirety of the periods in question.<sup>6</sup>

[13] Contrary to the Applicant's submissions, the General Division considered the Applicant's arguments asserting that she had received bad advice from an agent of the Commission.

[14] Regarding the issue at hand, the General Division found that the Applicant had received salary for certain weeks when she had declared no salary, or "zero;"<sup>7</sup> that the Commission allocated the income to the weeks or hours worked and that the Appellant [*sic*] does not contest this part of the decision;<sup>8</sup> and that the Commission correctly allocated these amounts to the weeks when the services were provided.<sup>9</sup> The General Division did not err in drawing its conclusions.

[15] The Applicant repeats the arguments that she presented to the General Division, but does not raise any argument showing that the General Division based its decision on a reviewable error. Whether the agent to whom she spoke did not wish to confirm his or her advice in writing does not change the situation.

[16] I have also reviewed the evidence on file. There is no evidence showing that the General Division overlooked or misinterpreted important evidence. I also find that the General Division

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<sup>5</sup> *Ibid.*, paras. 2 and 7.

<sup>6</sup> *Ibid.*, para. 12.

<sup>7</sup> *Ibid.*, para. 9.

<sup>8</sup> *Ibid.*, para. 11.

<sup>9</sup> *Ibid.*, para. 14.

did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors of 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.

[17] For these reasons, I find that the appeal does not have a reasonable chance of success.

**CONCLUSION**

[18] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	D. J., self-represented
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