



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. P. v. Canada Employment Insurance Commission*, 2018 SST 814

Tribunal File Number: AD-18-456

BETWEEN:

J. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 16, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. P. (Claimant), applied for Employment Insurance benefits effective June 30, 2013. She received a pension of \$355.54 per month from the Québec Pension Plan (QPP) starting August 1, 2013, but she did not report this amount because she was told not to do so. The Commission considered the amounts received in pension benefits as earnings and allocated the amounts to each of the weeks between July 28, 2013, and October 6, 2013. This resulted in an overpayment of \$853. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant's pension had been correctly allocated by the Commission. The General Division also found that it did not have the jurisdiction to write off the overpayment.

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

[5] In support of her application for leave to appeal, the Claimant argues that she does not agree with the fact that she must repay the overpayment because she considers this debt to be the result of inaccurate information the Commission gave her. She was honest in her efforts and thinks that she should not have to pay for the Commission's mistake.

[6] 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.

[7] 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

[8] 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

[9] Subsection 58(1) of the DESD Act 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.

[10] 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 a 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, a claimant does not have to prove their case; they must instead establish that the appeal has a reasonable chance of success. In other words, they must show that there is arguably some reviewable error based on which the appeal may succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal raised by a claimant has a reasonable chance of success.

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

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?

[13] In support of her application for leave to appeal, the Claimant argues that she feels prejudiced by the Commission. She went to the Service Canada office to find out whether she had to report her pension. The agent told her that she did not have to report it. The Claimant insists that the amount should have been excluded from her benefits and that the burden would have been less than the reimbursement that she currently has to pay. She believes the Commission is responsible for the situation and does not want to repay the overpayment because she was honest in this matter.

[14] The General Division determined that the Claimant's pension had been correctly allocated by the Commission.

[15] The Federal Court of Appeal has clearly and consistently demonstrated that a claimant who receives money to which they are not entitled is not excused from having to repay it, even if the payment was the result of a mistake made by the Commission.¹

[16] As the General Division highlighted, if the Claimant would like to request a write-off of her debt, a formal request should be made directly to the Commission so that a decision can be made on that issue.

[17] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised an issue that may lead to the setting aside of the decision under review.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. P., self-represented
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