Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *9051-6394 Québec Inc. v. Canada Employment Insurance Commission*, 2018 SST 791

Tribunal File Number: AD-18-413

BETWEEN:

9051-6394 Québec Inc.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 9, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, 9051-6394 Québec Inc. (employer), issued records of employment for four of its employees, following periods of work they completed for it from 2006 to 2011 and for which Employment Insurance benefits were paid to them. Following an investigation, the Respondent, the Canada Employment Insurance Commission, found that the employer had issued false records of employment for the four employees and that it had provided false information about the work performed by two of the four employees.

[3] The employer disagrees with the decisions rendered by the Commission. It explained that the records of employment it had issued reflect the information in its employee records and that they were not false. The employer appealed before the Employment Insurance Board of Referees. The file was then transferred to the General Division.

[4] The General Division found that the imposition of a monetary penalty on the employer for having committed an act or omission when issuing nine records of employment (nine acts or omissions) between September 6, 2009, and November 14, 2011, as well as completing and signing two Request for Payroll Information forms (two acts or omissions), one dated March 13, 2011, and the other, June 9, 2011, is justified within the meaning of s. 39 of the *Employment Insurance Act* (EI Act).

[5] The General Division also found that the issuance of a warning letter to the employer for having committed acts or omissions (eight acts or omissions) when issuing eight records of employment between June 4, 2007, and April 27, 2009, is justified under s. 41.1 of the EI Act.

[6] The employer now seeks leave to appeal the General Division decision.

[7] In support of its application for leave to appeal, the employer reiterated its position that the records of employment do not contain false information because they were completed based on employee records.

[8] On July 11, 2018, the Tribunal sent the employer a letter, asking that it explain in detail why it was requesting leave to appeal the General Division decision. The employer was informed that it was not sufficient to simply repeat before the Appeal Division what it had previously said before the General Division.

[9] In its reply to the Tribunal, the employer argued that it does not have options when completing the Record of Employment and that it must use the payroll to complete records of employment. The Employer would like the Appeal Division to decide on the issue of how it might have committed fraud in such a case. It submits that the General Division did not rule on this issue.

[10] 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.

[11] The Tribunal refuses leave to appeal because the employer has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[12] Does the employer's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

[13] 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 made in a perverse or capricious manner or without regard for the material before it.

[14] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the employer 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 employer does not have to prove its case; instead it must establish that its appeal has a reasonable chance of success. In other words, it must establish that there is arguably some reviewable error based on which the appeal might succeed.

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

[16] 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 an issue of natural justice, jurisdiction, law, or fact that could justify setting aside the decision under review.

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

[17] In support of his application for leave to appeal, the employer argues that it does not have other options when completing records of employment and that it must use the payroll to complete them. The employer would like the Appeal Division to decide on the issue of whether fraud could occur in these circumstances. It argues that the General Division did not rule on this issue.

[18] The Tribunal notes that the General Division did not accept the employer's argument that the records of employment do not contain false information because they were completed based on payroll information.

[19] The General Division determined that, even though the information in the records of employment comes from the employee records (payroll), this situation does not make

the information recorded on the employees' records of employment true because the information provided by the employer does not align with the periods during which the employees worked for it.

[20] The General Division found that the Commission's evidence shows that the employees had worked—when they said they had not—while receiving benefits. The employer did not take that into account in the records it issued.

[21] The General Division stated that the evidence the Commission submitted was obtained from documents that came from the employer. The documents mainly refer to copies of invoices, purchase orders, and deposit slips signed by the employees in question. In documents entitled [translation] "Document Certificate," the Commission indicated that the documents it had gathered ([translation] "printout or group of printouts") were [translation] "the original, a copy, or an excerpt from personnel or payroll records, timesheets, general ledgers, accounts, or other ledgers or documents belonging to the employer."

[22] The General Division determined that the Commission had shown that the records of employment issued by the employer contained false information and that it also had also conveyed false information in two documents entitled "Request for Payroll Information."

[23] The General Division found that the employer knew that the four employees had worked for it when they signed documents (e.g., invoices, purchase orders, deposit slips) during periods in which it declared that they had not worked or were not in its employ.

[24] The General Division found that the Commission had shown that the employer's alleged actions were committed knowingly and that the employer had knowingly made false representations.

[25] The General Division determined that the employer chose not to take into account information from company invoices, purchase orders, and deposit slips showing that the

employees in questions had worked during periods in which it indicated that they had not worked.

[26] The General Division stressed that the only requirement of Parliament is that of knowingly making a false or misleading statement, that is, while in full possession of the facts. The absence of the intent to defraud is of no relevance.[1]

[27] The appeal to the Tribunal's Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[28] The Tribunal finds that, despite the Tribunal's specific request of July 11, 2018, the employer has not raised any issue of law, fact, or jurisdiction that might lead to the setting aside of the decision under review.

[29] 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 employer has not raised an issue that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	9051-6394 Québec Inc., Applicant, represented by Yvon Duhaime

[1] *Canada (Attorney General) v. Bellil*, 2017 FCA 104.