



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *J. S. v. Canada Employment Insurance Commission*, 2018 SST 880

Tribunal File Number: AD-18-509

BETWEEN:

**J. S.**

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: Pierre Lafontaine

Date of Decision: September 4, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, J. S. (Claimant), worked part-time as a professor for his employer, theX. He carried out several teaching contracts for this institution from the week of October 25, 2015, to the week of April 24, 2016. In his reports, the Claimant declared the earnings that he received from this employer during the periods the courses were given and not throughout the entire period he was under contract. The Respondent, the Canada Employment Insurance Commission, determined that the Claimant had failed to declare the earnings from this employer correctly, following an investigation that it had carried out and based on information that it had obtained from the employer.

[3] Because of this, the Commission deducted these earnings from the benefits paid to the Claimant. This meant that the Commission then asked for the overpayment amounts back. The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division determined that the Claimant's earnings that are payable to him "under a contract of employment without the performance of services" must be "allocated to the period for which they are payable"—that is, the week of October 25, 2015, to the week of April, 27, 2016—because he carried out several teaching contracts for his employer during that period.

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

[6] In support of his application for leave to appeal, the Claimant argues that he correctly declared the amounts that he received from his employer. He submits that the

amounts he received should be allocated according to the days and weeks he worked and not based on the period he was under contract with the employer.

[7] The Tribunal must determine whether there is an arguable case that the General Division made a reviewable error that gives 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 that the General Division may have made that gives the appeal a reasonable chance of success?

### **ANALYSIS**

[10] Subsection 58(1) of the DESD Act outlines 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 of the case. It is an initial hurdle for the 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, 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, he must show that there is arguably some reviewable error based on which the appeal may succeed.

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

[13] 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 his grounds of appeal, has the Claimant raised a reviewable error that the General Division may have made that gives the appeal a reasonable chance of success?**

[14] In support of his application for leave to appeal, the Claimant argues that he correctly declared the amounts that he received from his employer. He submits that the amounts he received should be allocated according to the days and weeks he worked and not based on the period he was under contract with the employer.

[15] He argues that the General Division erred in its interpretation of s. 36 of the *Employment Insurance Regulations* when it allocated the amounts received based on the period he was under contract with the employer.

[16] 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 a reasonable chance of success. The Claimant has raised an issue concerning the General Division's interpretation of s. 36 of the Regulations that may lead to the setting aside of the decision under review.

## CONCLUSION

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	J. S., self-represented
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