



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. M. v. Canada Employment Insurance Commission*, 2018 SST 843

Tribunal File Number: AD-18-475

BETWEEN:

P. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 27, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal (Application) is refused.

OVERVIEW

[2] The Applicant, P. M., sought Employment Insurance (EI) benefits after being laid off from his employment. While he was receiving EI benefits, he worked and received earnings that he failed to report.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant knowingly made 11 false representations, so it allocated those earnings, imposed a penalty, and issued a violation. This resulted in an \$18,078.00 debt comprised of a \$12,052.00 overpayment of benefits and a \$6,026.00 penalty.

[4] The Applicant requested reconsideration. The Commission upheld the allocation of earnings, maintained the violation, and reduced the penalty from \$6,026.00 to \$2,410.00. The Applicant appealed to this Tribunal's General Division, arguing that the overpayment and penalty should be reduced because it was his financial circumstances that motivated his actions.

[5] The General Division found that: the Applicant had earnings in the relevant period; the Commission properly allocated those earnings; the Applicant knowingly made 11 false or misleading representations; the Commission imposed the penalty judicially; and the Applicant owes a debt to the Commission. It also concluded that the Tribunal does not have the jurisdiction to write off or cancel that debt.

[6] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division's decision was unfair.

[7] I find that the appeal does not have a reasonable chance of success because the Application simply repeats arguments the Applicant had made to the General Division and does not disclose any reviewable errors.

ISSUE

[8] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[9] Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction by not taking into account the Applicant's personal circumstances?

ANALYSIS

[10] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[11] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[12] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: 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.

[13] The Applicant submits that the General Division failed to take into account his personal circumstances and failed to act impartially. He argues that the conclusion that the Tribunal does not have the jurisdiction to write off or reduce the penalty or the overpayment of benefits was unfair, as was the fact that the hearing proceeded without both parties being present.

¹ *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).

² *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.

³ DESD Act at s. 58(2).

⁴ *Ibid.* at s. 58(1).

Late Application and Extension of time

[14] The Applicant was late in filing his Application with the Appeal Division.

[15] The Applicant has not provided an explanation for the delay between the end of the appeal period, June 21, 2018, and July 26, 2018, the date on which the Application was completed.

[16] However, in *Canada (Attorney General) v. Larkman*, 2012 FCA 204, the Federal Court of Appeal held that, when a decision-maker is determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[17] Therefore, I will consider whether the appeal has a reasonable chance of success.

Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction by not taking into account the Applicant's personal circumstances?

[18] I find that there is no arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction.

[19] “Natural justice” refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. The Applicant did not explain in what way the General Division failed to observe a principle of natural justice, and there is no error related to natural justice that is apparent on the face of the file.

[20] The General Division took the evidence in the documentary record into account. It also considered the Applicant's testimony that was given during the teleconference hearing.

[21] The General Division considered the Applicant's financial circumstances.⁵ It also conducted a full analysis on the issues of earnings, allocation, overpayment, misleading representations, penalty, and violation.⁶ It concluded, correctly, that this Tribunal does not have the jurisdiction to decide on matters relating to debt cancellation or write-off.

⁵ General Division decision at paras. 4, 22, 25, and 30–32.

⁶ Ibid. at paras. 12–33.

[22] As for the Commission's absence from the hearing, it is not mandatory for the Commission to attend a General Division hearing. The Commission was given appropriate notice of the hearing and chose not to attend. This does not constitute a breach of natural justice.

[23] In essence, the Applicant seeks to reargue his case based on arguments similar to those he made at the General Division. He submits that he should be permitted to present an appeal to the Appeal Division and/or "a body that does have the jurisdiction to write off the penalty or the overpayment." A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[24] The Applicant sought recourse with the body that has jurisdiction on matters related to debt cancellation or write-off, the Commission,⁷ and the Commission reduced the penalty but also decided that his circumstances did not warrant a write-off of the debt. This Tribunal is bound by the clear legislative provisions and cannot act beyond its authority. The Appeal Division does not have the jurisdiction to modify the Commission's decision regarding debt cancellation or write-off.

[25] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[26] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	P. M., self-represented
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⁷ *Employment Insurance Regulations*, s. 56.