



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *V. B. v. Canada Employment Insurance Commission*, 2018 SST 882

Tribunal File Number: AD-18-522

BETWEEN:

V. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 6, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, V. B. (Claimant), worked as a truck driver for the employer until May 4, 2012. On April 19, 2017, the employer issued a Record of Employment stating that the Claimant had received \$69,144 as a court-ordered settlement. The Canada Employment Insurance Commission [(Commission)] informed the Claimant that the sum of \$59,908.95 that he received as lost wages and vacation pay—\$48,436.42 in lost wages and \$1,472.53 as vacation pay—coming from his employer would be considered earnings and would be deducted from his benefits from August 19, 2012, to August 27, 2013. The application of these amounts resulted in an overpayment of \$11,522. The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that the sum that the Claimant received constituted earnings under s. 35 of the *Employment Insurance Regulations* (Regulations) and that these earnings were allocated in accordance with the provisions of s. 36 of the Regulations.

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

[5] In support of his application for leave to appeal, the Claimant argues that the General Division did not take into account his argument regarding the application of s. 46.01 of the *Employment Insurance Act* (EI Act). He also submits that the General Division erred by considering the received sum as earnings under the Regulations because the sum was paid in exchange for waiving his right to reinstatement. He submits that the General Division breached a principle of natural justice when it allowed the

Commission to present additional arguments without allowing him the opportunity to respond.

[6] 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.

[7] 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

[8] In his grounds of appeal, has the Claimant raised a reviewable error committed by the General Division that may give the appeal a reasonable chance of success?

ANALYSIS

[9] 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.

[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 the Claimant to meet, but it is lower than the one that must be met on 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; he must instead establish that the appeal has a reasonable chance of success. In other words, he must establish that there is an arguable case that there was a reviewable error that may give the appeal a reasonable chance of success.

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

[12] 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 may justify setting aside the decision under review.

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

[13] In support of his application for leave to appeal, the Claimant argues that the General Division did not take into account his argument regarding the application of s. 46.01 of the *Employment Insurance Act* (EI Act). He also submits that the General Division erred by considering the received sum as earnings under the Regulations because the sum was paid in exchange for waiving his right to reinstatement. He submits that the General Division breached a principle of natural justice when it allowed the Commission to present additional arguments without allowing him the opportunity to respond.

[14] 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 that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	V. B., self-represented
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