



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. A. v. Canada Employment Insurance Commission*, 2018 SST 896

Tribunal File Number: AD-18-544

BETWEEN:

**S. A.**

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: Stephen Bergen

Date of Decision: September 11, 2018

## **DECISION AND REASONS**

### **DECISION**

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

[2] The Applicant, S. A. (Claimant) was paid Employment Insurance benefits by the Respondent, Canada Employment Insurance Commission (Commission) under a renewal claim and again under a new initial claim for the same period of time. In other words, she was paid twice for the period. No fault was attributed to the Claimant, and she was not assessed a penalty or issued a notice of violation. According to the notice of debt dated June 24, 2017, the Claimant was required to repay an overpayment of \$6,000.00. The Claimant sought reconsideration.

[3] An allocation of severance payments had complicated matters. As a result of an adjustment to the allocation period and an increase in the Claimant's entitlement, the Commission reduced the \$6,000.00 overpayment by \$1,503.00 so that the new amount of the overpayment in the reconsideration decision was \$4,497.00. The Claimant appealed to the General Division, arguing that she should not have to repay any part of the overpayment because the Commission made the mistake. The General Division dismissed her appeal, and the Claimant now seeks leave to appeal.

[4] The Claimant's appeal has no reasonable chance of success. The Claimant has failed to identify in what manner the General Division failed to observe a principle of natural justice or made an error of law.

### **ISSUES**

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice?

[6] Is there an arguable case that the General Division made an error of law?

## ANALYSIS

### General principles

[7] The Appeal Division's task is more restricted than that of the General Division. The General Division is empowered to consider and weigh the evidence that is before it and to make findings of fact. The General Division then applies the law to these facts to reach conclusions on the substantive issues raised by the appeal.

[8] By way of contrast, the Appeal Division cannot intervene in a General Division decision unless it can find that the General Division has made one of the types of errors described by the grounds of appeal in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act) and set out below:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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.

[9] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion.

[10] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.<sup>1</sup>

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<sup>1</sup> *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259

**Is there an arguable case that the General Division failed to observe a principle of natural justice?**

[11] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision maker and the right of a party to be heard and to know the case against him or her. The Claimant has not raised a concern with the adequacy of the notice of the General Division hearing, with the pre-hearing disclosure of documents, with the manner in which the General Division hearing was conducted or her understanding of the process, or with any other action or procedure that could have affected her right to be heard or to answer the case. Nor has she suggested that the General Division member was biased or that he had prejudged the matter.

[12] I understand that the Claimant does not feel it is fair that she should be required to repay an amount that was paid to her in error, but this has nothing to do with whether or not the General Division process was conducted in accordance with natural justice. There is no arguable case that the General Division failed to observe a principle of natural justice under s. 58(1)(a) of the DESD Act.

**Is there an arguable case that the General Division made an error of law?**

[13] The Claimant did not argue that she was actually entitled under the provisions of the *Employment Insurance Act* (EI Act) to all the benefits that she was paid by the Commission. She argued that she should not have to repay amounts that were paid to her as a result of the Commission's own mistake.

[14] The General Division cited ss. 43 and 47 of the EI Act. Paragraph 43(b) states: "A claimant is liable to repay an amount paid by the Commission to the claimant as benefits to which the claimant is not entitled." Section 47 states that an amount payable under s. 43 is a debt due to the Crown and recoverable in the Federal Court or any other court of competent jurisdiction or in any manner provided by the EI Act. The General Division had no discretion to ignore the clear language of the EI Act.

[15] Section 56 of the *Employment Insurance Regulations* does permit the Commission to write off debts in certain circumstances. Unfortunately s. 112.1 of the EI Act does not permit the

Commission to conduct a s. 112 reconsideration of a write-off decision., and according to s. 113 of the EI Act, the General Division's jurisdiction permits it to hear only appeals of those decisions reconsidered under s. 112.

[16] There is therefore no arguable case that the General Division erred in law under s. 58(1)(b) of the DESD Act in confirming that the Claimant must repay the overpayment or in refusing to consider a write-off of the Claimant's debt.

**CONCLUSION**

[17] The application for leave to appeal is refused.

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVE:	S. A., self-represented
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