



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. V. v. Canada Employment Insurance Commission*, 2018 SST 960

Tribunal File Number: AD-18-573

BETWEEN:

**G. V.**

Applicant/Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Decision by: Shu-Tai Cheng

Date of Decision: September 28, 2018

## DECISION AND REASONS

### DECISION

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

[2] The appeal is allowed.

### OVERVIEW

[3] The Applicant, G. V., worked for X until August 2013. He applied for benefits under the *Employment Insurance Act* (EI Act), and received benefits until May 2014.

[4] The Respondent, the Canada Employment Insurance Commission, determined that the Applicant had received money on separation from his employment. This money was considered earnings and would be applied against the Employment Insurance benefits he had received. This resulted in an overpayment of over \$18,000.00.

[5] The Applicant requested reconsideration of the Respondent's decision, arguing that the money he received was for wrongful dismissal, not a loss of wages, and should not be considered earnings. The Respondent maintained its decision.

[6] The Applicant appealed the Respondent's decision to the General Division of the Social Security Tribunal of Canada. The General Division found that the Applicant received money to compensate him for loss of his employment and that it constituted earnings.

[7] The Applicant seeks leave to appeal the General Division decision on the basis that the General Division based its decision on findings of fact that were not based on the material in evidence. The Respondent agrees that leave to appeal should be granted and submits that the matter should be returned to the General Division, because the situation raises an issue of natural justice.

[8] I find that this appeal has a reasonable chance of success because the General Division made findings of fact in its decision that are not supported by the evidence in the appeal record. I allow the appeal because the General Division failed to observe a principle of natural justice when it found that the Applicant had given evidence that he did not give.

## ISSUE

[9] Is there an arguable case that the General Division erred in law or made a serious error in its findings of fact in arriving at its decision?

[10] Did the General Division breach a principle of natural justice in making findings of fact that are not supported by the evidence in the record?

## ANALYSIS

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

[12] 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?<sup>2</sup>

[13] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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] The Applicant submits that the General Division made serious errors in its fact-finding. He submits that the General Division inaccurately found that he had difficulty finding work and that he has to financially support his daughter who attends university, because he did not say such things. He asserts that he has a job and he does not have children. Therefore, the General Division came to these conclusions without regard to the material before it.

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

<sup>2</sup> *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.

<sup>3</sup> DESD Act at s. 58(2).

<sup>4</sup> *Ibid.* at s. 58(1).

[15] The Respondent agrees and further submits that the matter should be returned to the General Division for reconsideration because the General Division committed an error of natural justice.

[16] In accordance with the Social Security Tribunal Regulations and in order to conduct these proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit, I am rendering a decision on leave to appeal and on the merits of the appeal together.<sup>5</sup>

**Issue 1: Is there an arguable case that the General Division erred in law or made a serious error in its findings of fact in arriving at its decision?**

[17] I find that there is an arguable case that the General Division erred in law or made a mixed error of fact and law or a serious error in its findings of fact.

[18] In addition, I find that there is an arguable case that the General Division failed to observe a principle of natural justice.

[19] Here, the General Division found that the General Division found that the Applicant “has difficulty finding work and he has to financially support his daughter that attends university.”<sup>6</sup>

[20] The Applicant argues that he never made any statements to support either finding. In fact, he has a job and does not have any children.

[21] The Respondent made written submissions regarding the Application. It noted that after reviewing the audio recording of the General Division hearing, it agrees with the Applicant that the Applicant did not provide this information at the hearing. It is also not in the documentary record.

[22] For these reasons, the Respondent submits that the General Division made an error of natural justice.

[23] If the General Division made findings that were simply not based on any of the evidence before it, the General Division committed an error. That error could be categorized as a breach of

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<sup>5</sup> *Social Security Tribunal Regulations*, s. 3.

<sup>6</sup> General Division decision, para. 15.

natural justice, as an error of law, or as a serious error in its findings of fact, depending on the nature and severity of the error.

[24] However this error is categorized, the Applicant has raised arguments related to the General Division's decision upon which the proposed appeal might succeed.

[25] Therefore, I grant leave to appeal.

**Issue 2: Did the General Division breach a principle of natural justice in making findings of fact that are not supported by the evidence in the record?**

[26] I find that the General Division failed to observe a principle of natural justice when it found that the Applicant had given evidence that he did not give.

[27] The Appeal Division does not owe any deference to the General Division on questions of natural justice, jurisdiction and law.<sup>7</sup> In addition, the Appeal Division may find an error in law whether or not it appears on the face of the record.<sup>8</sup>

[28] There is simply no evidence, documentary or oral, that the Applicant had difficulty finding work or that he has to financially support his daughter who attends university. Neither of the parties has been able to locate any part of the appeal record upon which these statements could be based. Moreover, the Applicant contends that these findings are contrary to reality.

[29] This error is more severe than an erroneous finding of fact "made in a perverse or capricious manner or without regard for the material before it." There is simply nothing in the record to support these findings.

[30] "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.

[31] Here, the General Division did not afford the Applicant a fair process. The Applicant's right to be heard was not respected. The General Division "heard" testimony from the Applicant that he did not give.

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<sup>7</sup> *Canada (Attorney General) v. Paradis and Canada (Attorney General) v. Jean*, 2015 FCA 242 at para. 19.

<sup>8</sup> DESD Act at s. 58(1)(b).

[32] The Applicant must be given the opportunity to be heard. Therefore, I am referring this matter back to the General Division for reconsideration.

**CONCLUSION**

[33] The Application is granted pursuant to ss. 58(1)(a) of the *Department of Employment and Social Development Act*.

[34] The appeal is allowed. The matter is referred back to the General Division for reconsideration in accordance with these reasons and decision.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVES:	G. V., self-represented  Isabelle Thiffault, for the Respondent
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