



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. C. v. Canada Employment Insurance Commission*, 2018 SST 974

Tribunal File Number: AD-18-527

BETWEEN:

S. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 4, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. C. (Claimant), made an initial claim for Employment Insurance benefits. The [Respondent, the] Canada Employment Insurance Commission [Commission,] informed the Claimant that it had reviewed his application for Employment Insurance benefits because it believed that the Claimant had made one or more false or misleading statements. Specifically, the Claimant had failed to declare his employment income. The Claimant denied having received Employment Insurance benefits and stated that he was the victim of identity theft. The Commission reconsidered the application but upheld its initial decision. The Claimant appealed to the Tribunal's General Division.

[3] The General Division found that the Claimant had received Employment Insurance benefits while he was receiving a salary for services rendered to three employers. The Claimant therefore received earnings while receiving benefits, resulting in an overpayment after allocation. The General Division also found that the Claimant had knowingly made false or misleading statements to the Commission and that a penalty should be imposed on him and a notice of violation should be issued for a serious offence.

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

[5] In support of his application for leave to appeal, the Claimant repeated the arguments he presented before the General Division. He submits that he was tricked by a Commission agent in charge of his file. He argues that the Commission is insisting that his defence should be dismissed but that it does not have evidence supporting its position. He states that he has been consistent in his version of the facts throughout the process.

[6] The Tribunal wrote to the Claimant and asked him to explain in detail why he filed an appeal from the General Division decision. It reminded him that it is not enough to just repeat his testimony before the General Division.

[7] In his response to the Tribunal, the Claimant repeated that he showed the Tribunal that he had not received sums from the Commission, that he had been unjustly accused, and that he was consistent in his version of the facts throughout the process.

[8] The Tribunal must determine whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[10] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error made by the General Division?

ANALYSIS

[11] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision. These 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.

[12] 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, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[14] 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 made by the General Division?

[15] The General Division found that the Commission could reconsider the Claimant's application for benefits because it did so within the 36-month period established by the *Employment Insurance Act*.

[16] The Claimant admitted that he worked and that he received money as wages from three employers. The General Division found that the Commission had properly allocated the Claimant's earnings under s. 36(4) of the Regulations over the period during which the Claimant worked.

[17] The General Division did not believe the Claimant's version of the facts, namely that he had been a victim of identity theft, for a number of reasons that it mentioned in its decision and it found that he had received Employment Insurance benefits between August 26, 2012, and March 3, 2013.

[18] Notably, the General Division determined that the Claimant had provided the Commission with falsified bank statements to show that he had not received Employment Insurance benefits. The Tribunal found that it was clear and unequivocal that the last digit of the year of each date on the bank statements had been altered by hand.

[19] Furthermore, the Claimant's bank statements did not show the wages he admitted he had received from his employers in 2012 and 2013 or the benefits that he admitted he had received at the beginning of September 2012. Additionally, these sums could not

have been deposited in another account because the Claimant explained to the General Division that he had only one bank account.

[20] At the Commission's request, Caisse populaire staff provided statements and handwrote the origin of certain deposits and withdrawals. Unlike the bank statements the Claimant provided, these statements showed not only the Employment Insurance benefit payments but also the payment of wages from his employers.

[21] The General Division found that the Claimant had knowingly made misrepresentations by not declaring his income from his three jobs. It determined that the Claimant had submitted no reasonable explanation for the inaccuracy of his responses. It also determined that the Commission had exercised its discretion judiciously by imposing a monetary penalty and by issuing a notice of violation to the Claimant.

[22] In support of his application for leave to appeal, the Claimant essentially repeated his version of the events, which he had already submitted to the General Division for consideration.

[23] Unfortunately for the Claimant, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[24] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised an issue of law, fact, or jurisdiction that might lead to the setting aside of the decision under review.

[25] On review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

[26] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. C., self-represented
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