



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. C. v. Canada Employment Insurance Commission*, 2018 SST 1004

Tribunal File Number: AD-18-673

BETWEEN:

**D. C.**

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: Pierre Lafontaine

Date of Decision: October 19, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, D. C. (Claimant), worked for X. After losing his employment, he sent his former employer a formal notice and demanded that he be reinstated and given financial compensation. This led to discussions between the parties and an out-of-court settlement to have a total gross amount of \$25,000 paid to the Claimant.

[3] The Canada Employment Insurance Commission determined that, from this amount, \$20,000 was earnings. It therefore proceeded to allocate this amount, which resulted in an overpayment that the former employer paid back to the Commission from the amounts owed to the Claimant. The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division determined that the Claimant did not meet two of the three criteria established by case law for determining whether an amount can be considered compensation for relinquishing the right to be reinstated. Therefore, it found that the amount of \$20,000 should not have been considered compensation for relinquishing the right to be reinstated according to the sense the case law gives the expression. It also found that there was no indication in the Claimant's testimony or in the settlement that the employer agreed to pay any amount for psychological harassment.

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

[6] In support of his application for leave to appeal, the Claimant argues that the amount received is not earnings within the meaning of section 35 of the *Employment*

*Insurance Regulations* (Regulations) and that, for this reason, it does not have to be allocated under section 36 of the Regulations. He submits that the General Division failed to consider the evidence in the file.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that gives the appeal a reasonable chance of success.

[8] The Tribunal grants leave to appeal because the Claimant has raised at least one ground of appeal that gives the appeal a reasonable chance of success.

### **ISSUE**

[9] In his grounds of appeal, has the Claimant raised a reviewable error that the General Division may have made that gives the appeal a reasonable chance of success?

### **ANALYSIS**

[10] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the only grounds of appeal for 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.

[11] 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 at 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 an arguable case that there is a reviewable error based on which the appeal may succeed.

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

[13] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESDA, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

**Issue:** In his grounds of appeal, has the Claimant raised a reviewable error that the General Division may have made that gives the appeal a reasonable chance of success?

[14] In support of his application for leave to appeal, the Claimant argues that the amount received is not earnings within the meaning of section 35 of the Regulations and that, for this reason, it does not have to be allocated under section 36 of the Regulations.

[15] More specifically, the Claimant submits that the General Division erred because the amount received was intended to compensate him for the relinquishment of his right to be reinstated and for psychological harassment and was not paid in exchange for work completed or as the outcome of employment.

[16] The Claimant argues that the General Division erred because it made a decision without regard for the evidence before it.

[17] After reviewing the appeal file, the General Division 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 raises an issue about the General Division's interpretation of section 35 of the Regulations that may lead to the setting aside of the decision under review.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

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| REPRESENTATIVE: | D. C., self-represented |
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