



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. A. v. Canada Employment Insurance Commission*, 2018 SST 1143

Tribunal File Number: AD-18-720

BETWEEN:

R. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 13, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. A. (Claimant), established two separate claims for Employment Insurance sickness benefits, one beginning May 25, 2014, and one beginning October 25, 2015. In both cases, he received 15 weeks of sickness benefits without any deductions for earnings. The Respondent, the Canada Employment Insurance Commission (Commission), later conducted an investigation that revealed the Claimant was employed during both benefit periods and had failed to declare his earnings. The Commission notified the Claimant that the money he had received from his employer was considered earnings and was applied against his claim, resulting in an overpayment for benefits received in both benefit periods.

[3] The Commission also determined for both claim periods that the Claimant had knowingly made false statements when he failed to declare his work and earnings on his claimant reports. The Commission exercised its discretion to impose a warning in both cases. The Claimant requested that the Commission reconsider its decision; however, it maintained its original decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[4] The General Division found that the payments the Claimant had received from his employer were earnings according to section 35(2) of the *Employment Insurance Regulations* (EI Regulations) and that the earnings had been paid to the Claimant for services performed under his employment contract. As a result, they had to be allocated to the period in which the services were performed, according to section 36(4) of the EI Regulations. However, the General Division also found that the Claimant did not knowingly make any false statements or representations. As a result, the warnings were set aside.

[5] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division.

[6] In support of his application for leave to appeal, the Claimant submits that he worked for two employers before receiving sickness benefits. He stopped working with his full-time employer but continued to work part-time for the second employer. He submits that he relied on information from the Commission that he was not required to report his earnings from his second employer while receiving sickness benefits. He argues that he was misled by the Commission's representative who gave him this information. He states that he cannot pay the amount owing.

[7] The Tribunal must decide whether the General Division has committed a reviewable error on the basis of which the appeal might succeed.

[8] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

ANALYSIS

[10] Section 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 had 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. 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 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 based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[12] Therefore, before leave can be granted, the Tribunal must be satisfied that the reasons for appeal fall within any of the grounds of appeal mentioned above and that at least one of the reasons has 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 DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division 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?

[14] The Claimant argues that the Commission's representative who told him that he was not required to report his earnings from his second employer while receiving sickness benefits misled him. He submits that he cannot pay back the amount owing.

[15] The undisputed facts before the General Division show that the Claimant had earnings every week from the week of May 25, 2014, to the week of September 14, 2014, and from the week of October 25, 2015, to the week of January 31, 2016.

[16] The Claimant confirmed in his testimony before the General Division that he had worked during the weeks reported by his employer, and he agreed with the earnings as reported by his employer during those weeks.

[17] Although the Tribunal is sympathetic toward the Claimant, the Federal Court of Appeal has clearly and constantly decided that an applicant who receives money to which they are not entitled, even following a mistake of the Commission or an employer, is not excused from having to repay it.¹

¹ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

[18] In his application for leave to appeal, the Claimant has not identified any reviewable errors or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law, nor has he identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision.

[19] For the above-mentioned reasons and after reviewing the appeal docket and the General Division's decision and considering the Claimant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

[20] If the Claimant wants to request a write-off of his debt, he should make a formal request directly to the Commission so that a decision can be rendered on that issue.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. A., self-represented
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