



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. B. v. Canada Employment Insurance Commission*, 2018 SST 1190

Tribunal File Number: AD-18-665

BETWEEN:

J. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 20, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. B. (Claimant), worked at X from February 12, 2014, to October 1, 2017. She made two applications for benefits: one on January 18, 2016, and the other on January 16, 2017. The Claimant explained that she made these claims because her work hours had been reduced. The employer issued two records of employment with January 18, 2016, and January 18, 2017, as the respective employment end dates, but it stated that there had been no interruption of the Claimant's earnings and that it had issued those records at her request.

[3] The [Respondent, the Canada Employment Insurance] Commission [, (Commission)] refused the Claimant's request because it determined that she was disqualified from receiving benefits because her earnings were not interrupted for seven consecutive days. The Claimant requested a reconsideration of that decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that there had been no interruption of earnings and that, as a result, a benefit period could not be established for either of the Claimant's applications.

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

[6] In support of her application for leave to appeal, the Claimant asks why the Commission paid her benefits when she was not entitled to them because there had been no interruption of earnings for seven consecutive days. She would like to know the source of the Commission's error.

[7] On October 19, 2018, the Tribunal asked the Claimant in writing to provide her detailed grounds of appeal in support of the application for leave to appeal under section 58(1) of the *Department of Employment and Social Development Act* (DESDA). The Claimant did not respond to the Tribunal's request.

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

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal on which the appeal might succeed.

ISSUE

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

ANALYSIS

[11] Subsection 58(1) of the 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.

[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 claimants 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 their case; instead, they must establish that the appeal has a reasonable chance of success. In other words, they must establish that there is arguably some reviewable error based on which the appeal has a reasonable chance of success.

[13] Therefore, before leave can be granted, the Tribunal needs to be satisfied that at least one of the Claimant's reasons has a reasonable chance of success.

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

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[15] In support of her application for leave to appeal, the Claimant is asking why the Commission paid her benefits when she was not entitled to them because there was no interruption of earnings for seven consecutive days. She would like to know the source of the Commission's error.

[16] The undisputed evidence before the General Division shows that the Claimant's work hours were altered and that her [translation] "full-time" status became a [translation] "part-time" status. However, the Claimant continued to work at least four days a week, and her work was not interrupted. The employer issued records of employment at the Claimant's request.

[17] The General Division considered all of the evidence and the parties' arguments, and it determined that there was no interruption of earnings on January 18, 2016, or January 18, 2017. However, the Claimant's work schedule had changed on those two dates, given the decrease in the employer's business, but this situation did not result in any interruption in earnings over seven consecutive days.

[18] The Federal Court of Appeal has frequently decided that a claimant who receives money to which they are not entitled, even following a mistake by the Commission, is not excused from having to repay it.¹

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

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

[20] After reviewing 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. B., self-represented
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