Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *L. L. v Canada Employment Insurance Commission*, 2018 SST 1287

Tribunal File Number: AD-18-777

BETWEEN:

L. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 12, 2018

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] Starting on Thursday, February 23, 2017, the Applicant, L. L. (Claimant), took six weeks of parental leave from his employer, and he applied for six weeks of Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), approved his claim and the Claimant was paid six weeks of benefits in total. Some time later, the Commission investigated and determined that the Claimant actually received earnings from employment in each of the last two weeks in which he also received benefits. As a result, the Commission allocated these earnings to the weeks in which they were received, and it declared an overpayment of benefits.

[3] The Commission maintained its original decision on reconsideration. The Claimant appealed to the General Division, but his appeal was dismissed. He now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. He did not point to any evidence that the General Division ignored or overlooked, and I have been unable to discover any such evidence. There is no arguable case that the General Division erred under section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[5] Is there an arguable case that the General Division erroneously found that the Claimant received benefits to which he was not entitled without regard for the Claimant's evidence that he took six weeks of leave and received six weeks of benefits?

ANALYSIS

General Principles

[6] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the substantive issues raised by the appeal.

[7] However, the Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in section 58(1) of the DESD Act.

[8] The only grounds of appeal are the following:

a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
c) The General Division 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.

[9] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion.

[10] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case.[1]

Issue: Is there an arguable case that the General Division erroneously found that the Claimant received benefits to which he was not entitled without regard for the Claimant's

[1] *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.

evidence that he took six weeks of leave and received six weeks of benefits?

[11] The Claimant submits that the General Division must have ignored or misunderstood his evidence. However, the following facts have not been disputed and may be taken as established:

- Wednesday, February 22, 2017, was his last day of work before taking leave, and he had earnings on that day.
- He applied for parental benefits on February 23, 2017.
- He received his first benefit payment on March 15, 2017. That payment was for the week of March 5 to March 11, 2017.[2]
- The Claimant returned to work on Friday, April 7, 2017, and he had gross earnings in the work week from April 2 to April 8, 2017, in the total amount of $575.73.
- The Claimant worked during the week of April 9 to April 15, and he had gross earnings in that week in the total amount of $1451.63.

[12] Essentially, the Claimant's position is that he took six weeks of parental leave and collected six weeks of benefits, so he should not have to return any of the benefits he received. He did not understand that his benefit period must start on Sunday or that there is a one-week waiting period in which benefits are not payable.

[13] The General Division applied the law to a set of undisputed facts to find that the Claimant's earnings in the weeks of April 2–8, 2017, and April 9–15, 2017, must be allocated to those weeks. The General Division appreciated that the Claimant expected to receive six weeks of benefits to compensate for his six-week period of leave[3], but noted that he was not entitled to the full six weeks of benefits in his particular circumstances because of the manner in which benefits are calculated and paid under the EI Act.

[14] There is no arguable case that the General Division misunderstood or failed to consider the Claimant's evidence that he requested and expected six weeks of benefits. Nonetheless, in accordance with the leading of the Federal Court in *Karadeolian v Canada (Attorney General)*[4], I

[2] GD3-30.
[3] General Division decision, para 21
[4] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

have reviewed the record to determine if any other evidence may have been misunderstood or ignored that might give rise to an arguable case,

[15] I have not discovered any evidence that may have been overlooked or misunderstood, or any evidence that suggests that any General Division finding may have been perverse or capricious. Therefore, there is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act.

[16] The Claimant has no reasonable chance of success on appeal.

CONCLUSION

[17] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	L. L., self-represented