



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. C. v Canada Employment Insurance Commission*, 2019 SST 16

Tribunal File Number: AD-18-515

BETWEEN:

**K. 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: Janet Lew

Date of Decision: January 10, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, K. C. (Claimant), disputes that he owes any overpayment of Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that an overpayment arose after it made multiple adjustments to the Claimant's claim. The Commission described these adjustments in its initial decision dated March 31, 2017.<sup>1</sup> The Commission advised the Claimant in the same letter that it would be making further adjustments to account for additional income that the Claimant had received from one of his employers. The Commission maintained its decision on reconsideration.<sup>2</sup> The Claimant appealed to the General Division but his appeal was dismissed. He now seeks leave to appeal to the Appeal Division.

[3] There is no reasonable chance of success on appeal. The Claimant has not raised an arguable case that the General Division failed to observe a principle of natural justice, and I have not otherwise found that it erred in law or overlooked or misconstrued any of the evidence.

### ISSUE

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to explain the Commission's decision dated March 31, 2017?

### ANALYSIS

[5] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

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<sup>1</sup> Commission's initial decision dated March 31, 2017, at GD3-56 to GD3-57.

<sup>2</sup> Commission's reconsideration decision dated July 21, 2017, at GD3-70 to GD3-71.

- (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.

[6] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under section 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v Canada (Attorney General)*.<sup>3</sup>

**Is there an arguable case that the General Division failed to observe a principle of natural justice by failing to explain the Commission’s decision dated March 31, 2017?**

[7] The Claimant argues that the General Division failed to observe a principle of natural justice because it failed to explain the Commission’s letter dated March 31, 2017. The Claimant argues that the Commission’s letter is confusing and fails to communicate the events and policy decisions of Service Canada. The Claimant states that, despite reading the letter several times, he cannot understand it. He contacted Service Canada and spoke with two different agents. Neither agent was able to explain the letter’s contents. Both agents agreed with him that the letter is complex and difficult to follow. He claims that Service Canada is unable to explain the “long series of events” and the adjustments that it made.

[8] Natural justice involves ensuring that claimants have a fair opportunity to present their case and that proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division and how the General Division may have conducted itself, rather than the impact of any decisions on claimants. The Claimant’s allegations do not address any issues of

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<sup>3</sup> *Joseph v Canada (Attorney General)*, 2017 FC 391.

procedural fairness or natural justice *per se* as they relate to the General Division. The Claimant has not pointed to or provided any evidence—nor do I see any evidence—to suggest that the General Division deprived him of an opportunity to fully and fairly present his case or that it exhibited any bias against him. From this perspective, I am not satisfied that the appeal has a reasonable chance of success on this ground. In any event, there is no duty on the General Division to interpret and explain any correspondence from the Commission.

[9] From what I can infer, the Claimant is questioning whether the Commission had made the appropriate adjustments. After all, he questions whether he owes any overpayment at all. In this regard, the General Division was required to ensure that the Commission had made the appropriate adjustments to the Claimant's claim for Employment Insurance benefits because it would determine whether the Commission had correctly calculated the amount of the overpayment.

[10] At paragraph 21 of its decision, the General Division examined the Commission's adjustments. It found that the information in the March 31, 2017, letter coincided with the claim dates and changes listed in the appeal docket. It seems from this that the General Division had reviewed the adjustments to ensure that the Commission had made the correct calculations. The General Division also concluded that the vacation monies and pay in lieu of notice that the Claimant received from one of his employers were earnings and had been properly allocated.

[11] I note that although the March 31, 2015, letter is confusing, the Commission's representations<sup>4</sup> to the General Division provide a far clearer explanation. It is apparent that the current overpayment arose after the Commission received an amended Record of Employment from one of the Claimant's employers and learned that the Claimant had received an additional \$20,000 in severance from that employer on December 31, 2015. The Commission determined that this additional severance constituted earnings and allocated these additional monies, resulting in an overpayment.

[12] The General Division determined that \$12,000 of the \$20,000 was earnings. It also determined that under section 35 of the *Employment Insurance Regulations*, a portion of the settlement monies did not constitute earnings because it was intended to reimburse the Claimant

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<sup>4</sup> Commission's representations, at GD4-1 to GD4-4.

for his out-of-pocket expenses for purchasing equipment. This reduced the amount of the overpayment.

[13] I have reviewed the underlying record. I do not see any indication that the General Division erred in law or that it overlooked or misconstrued any key evidence. The General Division mentioned one of the employer's names but not the second employer's name, but ultimately this did not have any bearing on the outcome because the issue before the General Division was determining whether the additional settlement monies from the first employer constituted earnings.

**CONCLUSION**

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

Janet Lew  
Member, Appeal Division

SUBMISSIONS:	K. C., Applicant
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