



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *G. L. v. Canada Employment Insurance Commission*, 2019 SST 4

Tribunal File Number: AD-18-867

BETWEEN:

**G. L.**

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: January 4, 2019

## DECISION AND REASONS

### DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division for the files AD-18-867, AD-18-868, AD-18-869, AD-18-870, and AD-18-876.

[2] The Tribunal grants leave to appeal for the file AD-18-865.

### OVERVIEW

[3] The Applicant, G. L. (Claimant), made an initial claim for benefits on November 11, 2012; December 22, 2013; December 21, 2014; December 27, 2015; December 26, 2016; and December 24, 2017, respectively. On November 6, 2017, the [Respondent, the Canada Employment Insurance Commission (Commission),] informed the Claimant that it had readjusted his earnings because he had not declared the earnings he received from the municipality of X for each of the benefit periods. When it reviewed its decision, the Commission cancelled the penalties and the notice of violation that it had imposed on the Claimant. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the amounts that the Claimant received from the municipality constituted earnings that must be allocated under section 36(4) of the *Employment Insurance Regulations* (EI Regulations).

[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 he was only a city councillor from November 3, 2013, to March 1, 2018. He argues that the General Division committed an error because he was in this position for just four years and three months, rather than eight years.

[7] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error committed by the General Division.

[8] The Tribunal refuses leave to appeal to the Appeal Division for the files AD-18-867, AD-18-868, AD-18-869, AD-18-870, and AD-18-876.

[9] The Tribunal grants leave to appeal for the file AD-18-865.

## **ISSUE**

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

## **ANALYSIS**

[11] Section 58(1) of the [*Department of Employment and Social Development Act*] [(JDES 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.

[12] 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 on which the appeal might succeed.

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

[14] 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 the General Division may have committed?**

[15] This decision deals with the files AD-18-865, AD-18-867, AD-18-868, AD-18-869, AD-18-870, and AD-18-876.

[16] In support of his application for leave to appeal, the Claimant argues that he was a city councillor only from November 3, 2013, to March 1, 2018. He argues that the General Division committed an error because he was in this position for just four years and three months, rather than eight years.

[17] According to a document from the city manager of the municipality of X, the [Claimant], as a municipal elected official, received the following pay: \$1,317.90 for the year 2013; \$1,317.90 for the year 2014; \$1,344.26 for the year 2015; \$1,371.15 for the year 2016; \$1,398.57 for the year 2017, and \$291.38 for the year 2018. The director also confirmed that the [Claimant] received the sum of \$1,317.90 for the year 2012.<sup>1</sup>

[18] In his application for leave to appeal, the [Claimant] admitted that he received the amounts in question for 2014, 2015, 2016, 2017, and 2018.<sup>2</sup> He argues that the General Division made an error regarding the amounts received in 2012 and 2013 because he was a city councillor only as of November 3, 2013.

[19] The General Division determined that the amounts that the [Claimant] received from the municipality constituted earnings to be allocated under section 36(4) of the EI Regulations.

[20] The applicable provisions of the EI Regulations are as follows:

35. (1) The definitions in this subsection apply in this section.

*employment* means

(c) the tenure of an office as defined in subsection 2(1) of the *Canada Pension Plan*.

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<sup>1</sup> GD3-50.

<sup>2</sup> AD1-7.

*income* means any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in bankruptcy.

36 (1) Subject to subsection (2), the earnings of a claimant as determined under section 35 shall be allocated to weeks in the manner described in this section and, for the purposes referred to in subsection 35(2), shall be the earnings of the claimant for those weeks.

(4) Earnings that are payable to a claimant under a contract of employment for the performance of services shall be allocated to the period in which the services were performed.

[21] The applicable provisions of the *Canada Pension Plan* (CPP) are as follows:

2 (1) In this Act,

[...]

**office** means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a lieutenant governor, the office of a member of the Senate or House of Commons, a member of a legislative assembly or a member of a legislative or executive council and **any other office the incumbent of which is elected by popular vote** [emphasis added] or is elected or appointed in a representative capacity, and also includes the position of a corporation director, and *officer* means a person holding such an office;

[22] Under section 35(1)(c) of the EI Regulations, employment is the tenure of an office as defined in section 2(1) of the CPP.

[23] The [Claimant's] situation as a city councillor corresponded to the definition in section 2(1) of the CPP. The [Claimant] himself admitted to being an elected representative.

[24] As a result, the salary paid to an elected representative for services rendered constituted earnings under section 35 of the EI Regulations.

[25] Because this matter deals with earnings, these amounts must be allocated to the period in which the services were rendered, in accordance with section 36(4) of the EI Regulations.

[26] However, the General Division does not seem to have considered the evidence before it that the [Claimant] did not take office until November 3, 2013, and that he received no pay from the municipality before this date. This concerns only the file AD-18-865, which covers the period from November 11, 2012, to August 10, 2013.

[27] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal in the file AD-18-865 has a reasonable chance of success. In this file, the Claimant raises an issue that may lead to the setting aside of the decision under review.

### **CONCLUSION**

[28] The Tribunal refuses leave to appeal to the Appeal Division for the files AD-18-867, AD-18-868, AD-18-869, AD-18-870, and AD-18-876.

[29] The Tribunal grants leave to appeal for the file AD-18-865.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	G. L., self-represented
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