



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: E. N. v Canada Employment Insurance Commission, 2019 SST 12

Tribunal File Number: AD-18-883

BETWEEN:

E. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: January 10, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, E. N. (Claimant), was injured in an accident and left his employment as a result. He applied for and received Employment Insurance sick benefits. While on sick benefits, the Claimant left the country to visit a sick family member. When the Respondent, the Canada Employment Insurance Commission (Commission), later discovered that he had been outside of Canada while on benefits, it determined that he was disentitled for the entire period of his absence. In addition, the Commission found that the Claimant had continued to collect benefits after his return to Canada, during a period in which he also collected benefits. As a result, the Commission required him to repay the benefits that he should not have received, and it also imposed a penalty for making a false statement and issued a Notice of Violation.

[3] On reconsideration, the Commission found the Claimant to be exempt from the disentitlement that arose as result of his absence from the country, under section 37 of the *Employment Insurance Act* (EI Act), but that the exemption only applied to the first seven days in accordance with section 55(1) of the *Employment Insurance Regulations* (Regulations). Despite this, the Claimant remained disentitled for the entire period of his absence under section 18 of the EI Act, because his unavailability for work was unrelated to his injury. This meant that he would have to pay back the amount of the overpayment as determined by the Commission, but that the penalty and Notice of Violation were lifted.

[4] The Claimant appealed to the General Division of the Social Security Tribunal. At the General Division, the Claimant did not dispute the disentitlement or allocation of earnings, but he asked the General Division to consider his financial circumstances and write off the declared overpayment. Therefore, the only issue that the General Division addressed was whether the Claimant was liable to repay the overpayment and whether it could be written off. The General Division dismissed the appeal, and the Claimant now seeks leave to appeal the General Division decision to the Appeal Division.

[5] There is no reasonable chance of success. There is no arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction by failing to consider whether the Claimant's circumstances justified a write-off of the overpayment.

ISSUE

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction by refusing to consider the Claimant's request that the Commission forgive or write off his overpayment?

ANALYSIS

[7] 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 *Department of Employment and Social Development Act*.

[8] The grounds of appeal are as follows:

- 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] 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

Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction by refusing to consider the Claimant's request that the Commission forgive or write off his overpayment?

[10] There is no arguable case that the General Division refused to exercise its jurisdiction.

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

[11] It is not clear from the reconsideration file that the Commission has ever made a decision on a request by the Claimant to write off his overpayment. However, the General Division is correct that such a decision would be within the sole discretion of the Commission, as per section 56(1) of the Regulations.

[12] Under section 113 of the EI Act, the General Division has jurisdiction to consider only appeals of reconsideration decisions made under section 112 of the EI Act. Section 112.1 of the EI Act states that a decision respecting the write-off of any penalty owing, amount payable, or interest accrued on any penalty owing or amount payable is not subject to review under section 112 of the EI Act.

[13] Therefore, supposing the Commission to have refused to write off the Claimant's overpayment, such a refusal would not be open to reconsideration, and, therefore, the General Division could not hear an appeal on its merits.

[14] There is no arguable case that the General Division refused to exercise its jurisdiction by not considering or waiving the Claimant's obligation to repay the overpayment.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	E. N., self-represented
-----------------	-------------------------