



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. K. v. Canada Employment Insurance Commission*, 2019 SST 26

Tribunal File Number: AD-18-871

BETWEEN:

A. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 15, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. K. (Claimant), applied for Employment Insurance benefits on April 7, 2016, and a gross amount of \$840 in benefits was paid to her for the weeks from February 21 to March 5, 2016. However, according to the information that the employer provided, she worked and collected a salary during the weeks in question. As a result, the [Respondent, the] Canada Employment Insurance Commission [(Commission),] determined that the salary that the Claimant received was earnings, and this salary was allocated to the weeks from February 21 to March 5, 2016.

[3] The Claimant requested a reconsideration of this decision on the grounds that the benefits had not been paid to her and that she had not requested benefits for the weeks in question.

[4] The General Division determined that the Commission had correctly allocated the salary that the Claimant had received for the weeks from February 21 to March 5, 2016.

[5] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. She still disputes the idea that she applied for benefits for the weeks from February 21 to March 5, 2018 [*sic*]. She repeats that her April 7, 2016, application for benefits concerns the period from March 25 to April 1, 2016, which corresponds to the Easter holidays.

[6] 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.

[7] The Tribunal refuses leave to appeal because none of the Claimant's grounds of appeal give the appeal a reasonable chance of success.

ISSUE

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

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* [(DESD 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 made in a perverse or capricious manner or without regard for the material before it.

[10] 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 her case, but rather must 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 based on which the appeal might succeed.

[11] Therefore, before it can grant leave, the Tribunal needs to be satisfied that at least one of the grounds of appeal raised by the Claimant has a reasonable chance of success.

[12] 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?

[13] In support of her application for leave to appeal, the Claimant still disputes the idea that she applied for benefits for the weeks from February 21 to March 5, 2018 [*sic*]. She repeats that her April 7, 2016, application for benefits concerns the period from March 25 to April 1, 2016, which corresponds to the Easter holidays.

[14] The General Division determined that the Commission had correctly allocated the salary that the Claimant had received.

[15] The Claimant admits that she applied for benefits on April 7, 2016.

[16] As the General Division determined, the documentary evidence shows that the Claimant's electronic report from April 7, 2016, was for the period from February 21 to March 5, 2016.¹ However, according to the information that the employer provided, she worked and collected a salary during the weeks in question.²

[17] Following this declaration, the Commission paid the Claimant benefits in the gross amount of \$840, which was reduced to a net amount of \$788 after the appropriate deductions.³ The General Division determined that this amount of \$788 had been paid to the Claimant because it was deposited in her bank account on April 11, 2016, as is evident from the Claimant's bank statement regarding the deposit.⁴

[18] During the Commission's investigation, the Claimant admitted that she had probably made a mistake regarding the period covered by her April 7, 2016, report.⁵

[19] The evidence before the General Division shows that the Claimant received \$1,528 in salary in the period from February 21 to March 5, 2016, and that during this period, she also received a gross amount of \$840 in Employment Insurance benefits. There was therefore an overpayment of \$840 in Employment Insurance benefits.

[20] 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 does not have a reasonable chance of success. The Claimant has not raised any issue that may lead to the setting aside of the decision in question.

¹ GD3-35.

² GD3-40.

³ GD3-57.

⁴ GD5-2.

⁵ GD3-51.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented
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