



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. C. v. Canada Employment Insurance Commission*, 2019 SST 38

Tribunal File Number: AD-19-24

BETWEEN:

**D. 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: Pierre Lafontaine

Date of Decision: January 18, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, D. C. (Claimant), worked as a server for the employer, X, and stopped working for this employer because of a fire that occurred in his workplace. The Claimant applied for and received benefits. The [Respondent, the] Canada Employment Insurance Commission [(Commission),] informed the Claimant that he was not eligible for regular Employment Insurance benefits because he had not successfully shown that he had an interruption of earnings, given that he was paid during his leave period through a salary continuance provided to the employer by the insurer after the fire. As a result, the Commission asked for repayment of the excess payments (Overpayment). The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant continued to collect earnings from his employment after he stopped working on December 16, 2017. There was no period of at least seven consecutive days during which no earnings that arose from his employment were payable or allocated under section 14(1) of the *Employment Insurance Regulations*. In the absence of an interruption of earnings, the General Division found that the Claimant had to repay the Overpayment.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[5] In support of his application for leave to appeal, the Claimant disputes the General Division's finding that there was a salary continuance. He argues that earnings worth half the amount of Employment Insurance benefits cannot be considered a salary continuance.

[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 grounds of appeal that the Claimant has raised give the appeal a reasonable chance of success.

## **ISSUES**

[8] Was the application for leave to appeal filed before the established deadline?

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

## **ANALYSIS**

[10] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal for a General Division decision are the following: 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.

[11] 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; instead, he must establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably some reviewable error based on which the appeal might succeed.

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

[13] 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 1: Was the application for leave to appeal filed before the established deadline?**

[14] No. The Claimant argues that he lost track of things a little after his mother passed away after the General Division decision. He produced proof of death to corroborate his statement.

[15] In light of the circumstances in this case, the Tribunal finds that it is in the interest of justice to grant the [Claimant] an extension of time to apply for leave to appeal. The delay is only a few days, and the extension of time would not prejudice the Commission.

**Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have committed?**

[16] In support of his application for leave to appeal, the Claimant disputes the General Division's finding that there was a salary continuance. He argues that earnings worth half the amount of Employment Insurance benefits cannot be considered a salary continuance.

[17] As the General Division highlighted, to be eligible for Employment Insurance benefits, a claimant must fulfill certain conditions described in section 7 of the *Employment Insurance Act* (EI Act). One of the conditions is that the claimant must have experienced an interruption of earnings from their employment.<sup>1</sup>

[18] A claimant experiences an interruption of earnings if they are laid off or separated from their employment and have a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings arise from that employment.<sup>2</sup>

[19] The evidence before the General Division shows that the Claimant had earnings during his period of leave, thanks to a salary continuance that the insurer paid to the employer after the fire at the company.<sup>3</sup> There was therefore no period of at least seven consecutive days during which no earnings that arose from his employment were payable or allocated after he stopped working.

[20] As the General Division highlighted, even though the sum that the Claimant received was only a fraction of the earnings that he would have had if he could have continued to work, it was

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<sup>1</sup> EI Act, s 7(2).

<sup>2</sup> *Employment Insurance Regulations*, s 14(1).

<sup>3</sup> GD4-14.

earnings from his employer and was part of the earnings that had to be accounted for to verify whether there was an interruption of earnings under the EI Act.

[21] In the absence of an interruption of earnings, the General Division rightly found that the Claimant did not fulfill the necessary conditions to be eligible for Employment Insurance benefits and that he had to repay the amounts he received to which he was not entitled.<sup>4</sup>

[22] After reviewing the appeal docket, the General Division decision, and the arguments in support of the request for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

[23] The Claimant has not raised any issues of law, fact, or jurisdiction that might lead to the setting aside of the decision in question.

## CONCLUSION

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	D. C., self-represented
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<sup>4</sup> *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.