Social Security Tribunal of Canada   Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *P. M. v Canada Employment Insurance Commission*, 2019 SST 75

Tribunal File Number: AD-18-561

BETWEEN:

P. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 1, 2019

Canada

DECISION AND REASONS

DECISION

[1]   The Tribunal dismisses the appeal.

OVERVIEW

[2]   The Appellant, P. M. (Claimant), appealed to the General Division the overpayment resulting from a Commission decision made under sections 35 and 36 of the *Employment Insurance Regulations*. He alleged that there was no evidence before the Commission to show that he had actually received Employment Insurance benefits during the period in question.

[3]   The General Division summarily dismissed the Claimant's appeal since it had no jurisdiction to decide on an overpayment. It returned the case to the Commission so that a decision could be made on the issue of the allocation of earnings.

[4]   Following the General Division decision, the Commission made a reconsideration decision on the issue of the allocation of earnings.

[5]   In support of his appeal, the Claimant argues that he never received regular benefits after having received parental leave benefits. He submits that the Commission did not prove that he had completed reports for the period in question or that he had actually received Employment Insurance regular benefits during that period.

[6]   The Tribunal dismisses the Claimant's appeal.

ISSUE

[7]   Did the General Division err in summarily dismissing the Claimant's appeal?

ANALYSIS

Appeal Division's Mandate

[8]   The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESDA).[1]

[9]   The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10]   As a result, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division err in summarily dismissing the Claimant's appeal?

[11]   The Tribunal must consider whether the General Division erred in summarily dismissing the appeal under section 53(1) of the DESDA.

[12]   Before summarily dismissing an appeal, the General Division must ask itself the following question:

-    Does the appeal manifestly lack substance, and is it clearly bound to fail?

[13]   In this case, the General Division mentioned simply at the end of its decision that the appeal has no chance of success.

[14]   Even though the General Division did not explicitly cite the applicable test, it is clear to the Tribunal that the General Division weighed the purpose of the summary

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[1] *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

proceeding while applying the necessary, very high threshold before summarily dismissing the Claimant's appeal.

[15]   The Tribunal finds that the Claimant's appeal before the General Division was clearly bound to fail given that the General Division does not have the jurisdiction to decide on an overpayment. Only the Federal Court of Canada has the jurisdiction to provide recourse of this kind.

[16]   The Claimant is also free to challenge the source of the overpayment—the Commission's reconsideration decision made on August 21, 2018, on the issue of the allocation of earnings.

CONCLUSION

[17]   For the reasons mentioned above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	January 17, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. M., Appellant