



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v Canada Employment Insurance Commission*, 2019 SST 124

Tribunal File Number: AD-19-97

BETWEEN:

B. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 12, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, B. P. (Claimant), established an initial claim for employment insurance benefits. On her application for benefits, the Claimant advised that she was employed with the X School District as a teacher. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had a permanent teaching contract and was not entitled to benefits during the summer non-teaching periods. The Claimant requested a reconsideration of this decision, and the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division of the Tribunal.

[3] The General Division found that the Claimant had an obligation to return the money to the Commission because she had received money for benefits she was not actually entitled to. The General Division determined that the Claimant did not fulfill the *Employment Insurance Regulations* (EI Regulations) requirements to be granted a write-off of her debt.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division.

[5] In support of her application for leave to appeal, the Claimant submits that the General Division failed to consider that it was not her fault that the Commission deposited the money into her account. She argues that the Commission had all the relevant information and, therefore, she should not have received any money during the summer non-teaching period.

[6] The Tribunal must decide whether there is some reviewable error of the General Division on which the appeal might succeed.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no 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 made?

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states 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.

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

[11] Therefore, before the Tribunal can grant leave, it needs to be satisfied that the reasons for appeal fall within any of the grounds of appeal mentioned above and that at least one of the reasons 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.

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

[13] The Claimant acknowledged before the General Division that she was not entitled to benefits during the non-teaching summer period.

[14] However, the Claimant submits that the General Division failed to consider that it was not her fault that the Commission deposited the money into her account and that she should not

be penalized for the Commission's error. She argues that the Commission had all the relevant information and, therefore, she should not have received any money during the summer non-teaching period.

[15] Although the Tribunal is sympathetic to the Claimant's situation, the Federal Court of Appeal has clearly and consistently decided that an applicant who receives money they are not entitled to, even if this is the Commission's mistake, is not excused from having to repay it.¹

[16] On the issue of a write off, the Tribunal notes that the General Division went beyond its jurisdiction when it concluded that it could not write off the Claimant's debt under section 56 of the EI Regulations. Only the Federal Court, following a decision by the Commission on that issue, has the jurisdiction to hear an appeal on the issue of a write-off.

[17] If the Claimant wants to request a write-off of her debt, a formal request should be made directly to the Commission so that a decision be rendered on that issue.

[18] For the reasons mentioned above and after reviewing the appeal file and the General Division decision and considering the Claimant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

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| REPRESENTATIVE: | B. P., self-represented |
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¹ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.