



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. V. v Canada Employment Insurance Commission*, 2019 SST 125

Tribunal File Number: AD-19-48

BETWEEN:

M. V.

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, M. V. (Claimant), was laid off from her employment and was paid \$1,684.99 and \$34,489.21 in vacation and severance pay, respectively. The Respondent, the Canada Employment Insurance Commission (Commission), allocated these amounts against the claim for benefits. The Claimant disagreed with the Commission's decision because she is in a poor financial situation and needs additional income assistance to help her care for her ailing mother's medical and other daily needs. 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 vacation and severance pay the Claimant received from the employer were earnings and that the Commission correctly allocated the earnings under sections 35 and 36 of the *Employment Insurance Regulations* (EI Regulations).

[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 states that she would like the Tribunal to consider her situation because she is in a poor financial situation since she has to take care of her sick mother.

[6] The Tribunal sent the Claimant a letter asking her to explain in detail her grounds of appeal. The Claimant argues that the General Division did not consider her financial situation and her obligation to care for her sick mother.

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

[8] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

ANALYSIS

[10] 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.

[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 her case; instead, she 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 on which the appeal might succeed.

[12] Therefore, before the Tribunal can grant leave, it must 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.

[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.

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

[14] In support of her application for leave to appeal, the Claimant argues that the General Division did not consider her financial situation and her obligation to care for her sick mother.

[15] The Federal Court of Appeal has clearly established that amounts paid because of separation from an employment constitute earnings within the meaning of section 35 of the EI Regulations and must be allocated in accordance with section 36(9) of the EI Regulations.

[16] Therefore, the General Division did not err when it concluded that the Claimant had earnings under section 35(2) of the EI Regulations and that these earnings were correctly allocated following section 36(9) of the EI Regulations since the earnings were paid because of separation from an employment.

[17] As the General Division explained, the Tribunal must act within the limitations of the *Employment Insurance Act*. The Tribunal cannot go beyond these limitations for any reason, no matter how compelling the circumstances.

[18] In her application for leave to appeal, the Claimant has not identified any reviewable errors, such as a jurisdictional one, or any failure by the General Division to observe a principle of natural justice. She has not identified errors in law and has not identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision.

[19] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. V., self-represented
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