



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v Canada Employment Insurance Commission*, 2019 SST 96

Tribunal File Number: AD-19-37

BETWEEN:

D. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 9, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, D. C. (Claimant), lost his employment. He received vacation pay and severance pay, which he disclosed to the Respondent, the Canada Employment Insurance Commission (Commission), when he first applied for Employment Insurance benefits. The Commission failed to allocate the severance pay and did not discover its error until several months later, after the Claimant had found other employment and was no longer receiving claim benefits. At that point, the Commission retroactively allocated the Claimant's severance to weeks in which the Claimant had received benefits, and it declared an overpayment.

[3] When the Claimant requested that the Commission reconsider, the Commission maintained its original decision. The Claimant appealed to the General Division, which dismissed his claim with modification, specifying a slightly different allocation. The Claimant now seeks leave to appeal.

[4] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division failed to observe a principle of natural justice or made a jurisdictional error. In addition, the Claimant does not dispute any of the facts on which the General Division relied.

ISSUE

[5] Is there an arguable case that the General Division failed to observe a principle of natural justice or that it made an error of jurisdiction?

ANALYSIS

[6] The Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the "grounds of

appeal” in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The only grounds of appeal are as follows:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record, or;
The General Division 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.

[8] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success based on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case.¹

Is there an arguable case that the General Division failed to observe a principle of natural justice or that it made an error of jurisdiction?

[9] The only ground of appeal that the Claimant has raised is that the General Division erred by failing to observe a principle of natural justice. In support of that ground of appeal, he argues that it is unfair that he should be prejudiced by the Commission’s failure to properly allocate his severance payment.

[10] I have jurisdiction to consider only those errors that may have been made at the General Division. I have no ability to determine whether the Commission’s actions were unfair or breached a principle of natural justice. Furthermore, natural justice does not deal with the fairness of the result, but the fairness of the process. It includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against him or her.

[11] The Claimant has not raised a concern with the adequacy of the notice of the General Division hearing, with the pre-hearing exchange or disclosure of documents, with the manner in

¹ *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.

which the General Division hearing was conducted or his own understanding of the process, or with any other action or procedure that could have affected his right to be heard or to answer the case. Nor has he suggested that the General Division member was biased or that the member had prejudged the matter.

[12] I understand that the Claimant had informed the Commission of the severance that he received and that the Commission failed to allocate it, and I understand that it paid the Claimant benefits to which he was not entitled as a result of its own mistake. Unfortunately, none of this suggests that the General Division may have failed to observe a principle of natural justice. Therefore, there is no arguable case that the General Division erred under section 58(1)(a) of the DESD Act by failing to observe a principle of natural justice.

[13] Turning to the question of jurisdiction, the only issue before the General Division was whether the Claimant's severance payment constituted earnings and whether it was properly allocated. The Claimant did not dispute that the severance payment should be considered earnings, and he did not suggest that the General Division failed to consider how those earnings should be allocated. Furthermore, he has not suggested that the General Division considered any other issues that it should not have considered, and he has not identified any other jurisdictional error. There is no arguable case that the General Division erred under section 58(1)(a) of the DESD Act by refusing to exercise its jurisdiction or by acting beyond its jurisdiction.

[14] The Federal Court in *Karadeolian v Canada (Attorney General)*,² noted that leave to appeal may still be granted where the General Division arguably overlooked or misunderstood key evidence, even where the appellant has not properly identified such an error under the grounds of appeal. However, the Claimant does not dispute any of the key facts on which the decision is based. Therefore, the General Division could not have based its decision on an erroneous finding of fact under section 58(1)(c) of the DESD Act.

[15] The Claimant has no reasonable chance of success on appeal.

² *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

CONCLUSION

[16] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE	D. C., self-represented
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