



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. B. v Canada Employment Insurance Commission*, 2019 SST 142

Tribunal File Number: AD-19-112

BETWEEN:

G. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 18, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, G. B. (Claimant), received the sum of \$3,799.12 from his employer. The Commission considered the sum earnings and allocated it to his Employment Insurance benefits from February 1, 2017, to January 31, 2018. The Commission divided the amount received by 42, the number of weeks the Claimant worked. The Commission then allocated \$90 per week from December 24, 2017, to January 27, 2018.

[3] The General Division found that the amount received for participation in profits constituted earnings within the meaning of section 35(2) of the *Employment Insurance Regulations* (EI Regulations), which should be allocated under section 36(6) of the EI Regulations over the weeks in which services were performed.

[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 argues that he has always believed in justice. He submits that the General Division's decision comes from committees of selected people who agree on the application of the legislation without considering the people who deal with Employment Insurance.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that may give the appeal a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised at least one ground of appeal based on which the appeal has a 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 DESD Act specifies the only grounds of appeal of a General Division decision, which 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 of the case. 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 application for leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that his appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that the Claimant has raised 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 decision under review.

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

[13] In support of his application for leave to appeal, the Claimant argues that he has always believed in justice. He submits that the General Division decision comes from committees of selected people who agree on the application of the legislation without considering the people who resort to Employment Insurance.

[14] The Tribunal must decide whether to grant the Claimant leave to appeal by considering the evidence presented to the General Division. The Appeal Division's powers are limited by section 58(1) of the DESD Act.

[15] The General Division determined that the amount paid to the Claimant as a bonus is participation in profits because it is directly based on the company's profitability.

[16] The General Division found that the amount received as participation in profits constituted earnings within the meaning of section 35(2) of the EI Regulations, which should be allocated under section 36(6) of the EI Regulations, that is, over the weeks in which the services were performed.

[17] The undisputed evidence that the Claimant received \$3,799.12 from the employer as participation in profits for the period from February 1, 2017, to January 31, 2018. The sum was paid on May 1, 2018.¹

[18] The Records of Employment indicate that the Claimant worked from March 6, 2017, to November 17, 2017, and from December 25, 2017, to February 1, 2018, for a total of 42 weeks worked.²

[19] Therefore, the amount received of \$3,799.12 should be allocated, according to section 36(6) of the EI Regulations, to the 42 weeks when services were performed, that is, between February 1, 2017, and January 31, 2018, the period for which the payment for participation in profits was made. The weekly allocation amount is \$90.

[20] Unfortunately for the Claimant, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[21] The Tribunal notes that the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

¹ GD3-16.

² GD3-12, GD3-14.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	G. B., self-represented
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