



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. G. v Canada Employment Insurance Commission*, 2019 SST 148

Tribunal File Number: AD-18-583

BETWEEN:

R. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: February 20, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. G., applied for and received Employment Insurance (EI) benefits. He reported zero income on his claimant reports during a period in which he was later determined to have had earnings.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant had received earnings and allocated them to a two-month period in 2017. The Commission also imposed a penalty and issued a notice of violation. The Applicant requested a reconsideration. The Commission reduced the Applicant's penalty because of mitigating circumstances.

[4] The General Division found that the Applicant had earnings in the relevant period and that they had been properly allocated. It also found that the Applicant "knowingly" made five false statements. However, it found that the Commission did not exercise its discretion properly and reduced the penalty further.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division's decision was wrong in law, because the General Division found that he knew what he was doing when filing his claimant reports, but he argues he did not.

[6] The appeal does not have a reasonable chance of success, because the Application simply repeats arguments the Applicant made to the General Division and does not disclose any reviewable errors.

ISSUES

[7] Is there an arguable case that the General Division based its decision on an error of law?

[8] Is there an arguable case that the General Division made an important error regarding the finding of facts, in particular that the Applicant “knowingly” made false statements?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground on which the proposed appeal might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: 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 made in a perverse or capricious manner or without regard for the material before it.

[12] The Applicant submits that the General Division failed to properly assess what he knew when he filed his claimant reports. He argues that his conduct was due to an honest mistake and not intentional.

Issue 1: Is there an arguable case that the General Division based its decision on an error of law?

[13] I find that there is no arguable case that the General Division erred in law.

¹ *Department of Employment and Social Development Act* (DESD Act), ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

³ DESD Act, s 58(2).

⁴ *Ibid.*, s 58(1).

[14] This appeal turns on whether the Applicant “knowingly” made false or misleading statements.⁵ The Applicant does not dispute that his statements were false; he disputes the General Division’s finding that he knew what he was doing.

[15] The General Division was required to assess whether the Applicant had provided a reasonable explanation to show that his statements were not knowingly made.⁶ The General Division correctly stated the binding jurisprudence and the applicable legal tests.⁷

[16] The General Division noted that the Applicant’s explanation was that he did not intentionally submit false statements and had planned to cancel his EI benefits. However, the General Division determined that the Applicant had subjective knowledge; the questions on the claimant reports were clear, straightforward, and unambiguous; the Applicant worked for the employer and had earnings during the benefit period; and the Applicant had not provided a reasonable explanation for his false statements. The General Division, therefore, determined that the Applicant had made the statements knowingly.

[17] The General Division correctly applied the legal tests established in binding Federal Court of Appeal jurisprudence. The General Division did not err in law in this regard.

[18] The General Division considered the Applicant’s arguments and the evidence on file. It considered his testimony and the reasons he gave to explain his statements. The General Division did not err in law by failing to consider the Applicant’s relevant arguments.

[19] The appeal does not have a reasonable chance of success based on this ground.

Issue 2: Is there an arguable case that the General Division made an important error regarding the finding of facts, in particular that the Applicant “knowingly” made false statements?

[20] I find that there is no arguable case that the General Division made an important error in its finding of facts.

⁵ General Division decision at paras 13 to 17.

⁶ *Mootoo v Canada (Minister of Human Resources Development)*, 2003 FCA 206.

⁷ *Supra* note 5.

[21] The Applicant argues that he did not intentionally make false statements and was repaying the overpayment. Therefore, he could not have “knowingly” made the statements and he should not have to pay a penalty. While the Applicant submits that the General Division erred in law, these arguments may be interpreted as arguments that the General Division made an important error in its findings of fact.

[22] The Applicant’s submissions before the General Division, which included each of these arguments, were noted in the General Division decision.⁸ Essentially, the Applicant seeks to reargue his case based on the same arguments that he made at the General Division. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[23] I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence.

[24] The appeal does not have a reasonable chance of success based on this ground.

CONCLUSION

[25] I am satisfied that the appeal has no reasonable chance of success, so the Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	R. G., self-represented
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⁸ General Division decision at paras 17, 21, and 22.