



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *H. B. v Canada Employment Insurance Commission*, 2019 SST 149

Tribunal File Number: AD-18-719

BETWEEN:

H. B.

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 21, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision made by the General Division of the Social Security Tribunal of Canada on October 8, 2018, is refused.

OVERVIEW

[2] The Applicant, H. B., applied for and received Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission, adjusted the Applicant's earnings because he had received a sum from his employer that he had not declared. Following this adjustment, the Commission notified the Applicant that he had to repay some of the benefits he had received.

[3] The Applicant submits that the sum he received should not be allocated to his benefit periods because this vacation pay sum does not constitute additional earnings; he was obligated to take vacation, and this sum was paid when he was not receiving any insurable income.

[4] The Applicant appealed the Commission's decision. The General Division found that the Applicant had received this sum as vacation pay, which constitutes earnings according to the law, and that the Commission had correctly allocated the sum.

[5] In his application for leave to appeal, the Applicant submitted that the General Division based its decision on important errors regarding the facts of the appeal file.

[6] The appeal does not have a reasonable chance of success because the Applicant has not raised an argument showing that the General Division may have made an error.

ISSUE

[7] Is there an argument that the General Division erred by finding that the Commission had correctly allocated the sum that the Applicant received?

ANALYSIS

[8] An applicant must be granted leave to appeal a decision made by the General Division. The Appeal Division must either grant or refuse leave to appeal, and an appeal may be brought only if leave to appeal is granted.¹

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

[10] 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. The only reviewable errors are the following:⁴ the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

Is there an argument that the General Division erred by finding that the Commission had correctly allocated the sum that the Applicant received?

[11] No, there is no argument that the General Division erred.

[12] According to the Applicant, the General Division should have considered the following: it was a work stoppage situation not a disruption of employment situation; he did not ask for the vacation pay; the sum is linked to a period of forced and mandatory leave; the sum was allocated to a period where he had not received any insurable income; and the sum should not have been allocated to a benefit period because Employment Insurance applies only to insurable wages and income.

¹ *Department of Employment and Social Development Act* (DESDA), 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 DESDA, s 58(2).

⁴ DESDA, s 58(1).

[13] However, on reading the General Division decision, I note that it includes the following:

[Translation]

The Appellant argues that his vacation pay does not constitute additional earnings because he was obligated to take three weeks of vacation during the holiday period.⁵

[T]he Appellant further stated that it was not really a work stoppage situation because, even though the contract was ending, the employer could call him back when another contract became available.⁶

Even though the Appellant was on leave that his employer predetermined for December 23, 2017, to January 14, 2018, he had not asked his employer for vacation pay. As the email exchanges between the Appellant and the employer show and as the Appellant testified, it was not until January 8, 2018, that he asked for the vacation pay. The Appellant asked for the vacation pay because the employer had just notified him that his contract would be ending January 19, 2018.⁷

Although, in the Appellant's case, he was on leave when the employer notified him that his contract would not be renewed and that it would end on January 19, 2018, it was only then and for this reason that the Appellant asked for the vacation pay. While the Tribunal understands the Appellant's disappointment, it is not exempt from applying the Act.⁸

[14] Contrary to the Applicant's submission, the General Division considered his arguments.

[15] Regarding the issue at hand, the General Division found that the Appellant had received a sum as vacation pay;⁹ the sum constituted earnings under the Employment Insurance Act and Regulations;¹⁰ the Appellant's employment ended on January 19, 2018;¹¹ the Commission had allocated the earnings to the two following weeks;¹² and the Commission had correctly allocated that sum.¹³ The General Division did not err in drawing its conclusions.

⁵ General Division decision at para 6.

⁶ *Ibid.* at para 7.

⁷ *Ibid.* at para 12.

⁸ *Ibid.* at para 16.

⁹ *Ibid.* at para 6.

¹⁰ *Ibid.* at paras 8–12.

¹¹ *Ibid.* at paras 6, 8–10, 12, 14, and 16.

¹² *Ibid.* at para 10.

¹³ *Ibid.* at para 14–17.

[16] The Applicant repeats the arguments he presented to the General Division, but he does not raise any argument showing that the General Division may have based its decision on a reviewable error. The issues that the Applicant raises in his application are based on erroneous conclusions he made and have no effect on the decision.

[17] I have also reviewed the evidence on file. There is no evidence showing that the General Division overlooked or misinterpreted important evidence. I also find that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not identified any error of law or any erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[18] For these reasons, I find that the appeal does not have a reasonable chance of success.

CONCLUSION

[19] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	H. B., self-represented
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