



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. C. v Canada Employment Insurance Commission*, 2019 SST 163

Tribunal File Number: AD-19-5

BETWEEN:

T. 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 25, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. C. (Claimant) collected 42 weeks of Employment Insurance benefits in 2013, based on a Record of Employment (ROE) from an employer who was later investigated for issuing fraudulent ROEs. In the course of its investigation, the Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had submitted a false ROE and that her benefit period had therefore not been established. The Commission also found that she submitted 21 false claimant's reports and had knowingly made 22 false representations. It declared an overpayment of all of the benefits paid to the Claimant and issued a warning.

[3] At the request of the Claimant, the Commission reconsidered its decision, but the decision was maintained. The Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed her appeal. The Claimant now seeks leave to appeal to the Appeal Division.

[4] There is no reasonable chance of success on appeal. The Claimant has not pointed to any evidence that the General Division overlooked or misunderstood.

ISSUE

[5] Is there an arguable case that the General Division overlooked or misunderstood the Claimant's evidence that she worked for the employer and that she had believed her ROE to be accurate?

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 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
- c) 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

Issue: Is there an arguable case that the General Division overlooked or misunderstood the Claimant’s evidence that she worked for the employer and that she had believed her ROE to be accurate?

[9] In her leave to appeal application, the Claimant asserts that she had not verified the information in her ROE but had proceeded on the basis that it was accurate. She also submitted that her work duties were such that she could not have described them in greater detail, noted that her duties were not primarily managerial, and sought to clarify her usual hours of work, and that she had not obtained any information from contact with her former co-workers.

[10] The General Division decision reveals that the member understood the Claimant’s evidence that she had not verified the information on her ROE and had believed it to be accurate. The decision also analyzed the Claimant’s testimony in which she maintained that she had worked for the employer, characterized her position, and explained the general nature of her duties. The evidence as to the hours she actually worked and her testimony that she had no contact with her former co-workers was also considered.

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

[11] However, the General Division found inconsistencies in the Claimant's evidence and found her not to be credible. In addition, the General Division noted that there was no documentary evidence to corroborate the Claimant's employment in the form of statements from co-workers, time sheets, T4 statement, pay stubs or cheques, bank account deposit information, or any other information except a brief undated letter from J.K., apparently on behalf of the employer. The letter from J.K. states that the Claimant worked during the period of employment showing on her ROE and that the ROE is accurate. The General Division attached no weight to the letter from J.K. because the employer was, itself, under investigation for falsifying ROEs for a number of claimants and was in a conflict of interest.

[12] I understand that the Claimant does not agree with how the General Division assessed the evidence or with its decision. However, the General Division's reasons are adequate to explain how it arrived at its decision, and the Appeal Division may not intervene in the General Division unless some specific error can be identified. It is not the role of the Appeal Division to reassess or reweigh the evidence to come to a different conclusion.²

[13] The Claimant has had the opportunity to provide evidence to both the Commission and the General Division about her title, working hours, rate of pay, the source of her information on the Commission's investigation of other employees, and other matters. I do not find that the General Division overlooked or misunderstood any of that evidence. To the extent that the Claimant's clarifications in her leave to appeal application may have provided new or additional information, I am unable to consider that evidence. The Appeal Division cannot consider evidence that was not before the General Division.³

[14] In accordance with the direction of the Federal Court in *Karadeolian v Canada (Attorney General)*,⁴ I have reviewed the file to identify any other significant evidence that may have been ignored or overlooked. I have been unable to find any mistake of fact that would support an arguable case that the General Division erred under section 58(1)(c) of the DESD Act.

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

² *Bergeron v Canada (Attorney General)*, 2016 FC 220; *Marcia v Canada (Attorney General)*, 2016 FC 1367).

³ *Mette v Canada (Attorney General)*, 2016 FCA 276.

⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	T. C., self-represented
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