



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. R. v Canada Employment Insurance Commission*, 2019 SST 168

Tribunal File Number: AD-18-704

BETWEEN:

C. R.

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 28, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, C. R., applied for and received Employment Insurance (EI) benefits. He reported no 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 23-week period in 2014. The Commission also imposed a monetary penalty and issued a notice of violation. The Applicant requested a reconsideration. The Commission reduced the Applicant's penalty to a non-monetary penalty and removed the violation.

[4] The General Division found that the Applicant had earnings in the relevant period and that they had been properly allocated. It found that the Applicant knowingly made false statements about those earnings. It also found that the Commission had exercised its discretion properly in issuing a warning (the non-monetary penalty).

[5] The Applicant filed his application for leave to appeal 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 because the General Division did not consider his arguments.

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

ISSUES

[7] Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?

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

[9] 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

[10] 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 move forward only if leave to appeal is granted.¹

[11] 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

[12] 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 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 made in a perverse or capricious manner or without regard for the material before it.

[13] The Applicant submits that the General Division failed to consider his specific circumstances. He argues that the Respondent sent the decision letter to the wrong address and that the delay in giving him notice limited his ability to get evidence dating back many years. In addition, he argues that he paid the earnings to people who substituted for him.

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).

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction?

[14] I find that there is no arguable case that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction.

[15] “Natural justice” refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. It is settled law that an applicant has the right to expect a fair hearing with a full opportunity to present their case before an impartial decision-maker.⁵

[16] The Applicant did not participate in the teleconference hearing with the General Division, although he had been notified of the hearing. He did not ask for an adjournment. He has not explained his absence apart from writing that he “was not able to attend.”⁶ He had an opportunity to present his case at this hearing but did not. He did not fulfill his responsibility to attend the hearing to present his case, so he cannot say that this was a breach of natural justice.

[17] The application for leave to appeal did not explain how the General Division failed to observe a principle of natural justice, and there was no material evidence supporting the Applicant’s argument that he was “not given a fair and democratic chance.”⁷ There is no error relating to natural justice that is apparent on the face of the record, either.

[18] 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 based its decision on an error of law?

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

[20] This appeal turns on whether the Applicant knowingly made false or misleading statements.⁸ The Applicant maintains that his statements were not false.

⁵ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 22.

⁶ Application at AD1-6.

⁷ *Ibid.*

⁸ General Division decision at paras 13 to 17.

[21] The General Division was required to review the evidence and make a finding on whether the Applicant's statements were false or misleading.

[22] The General Division first determined that the wages from the employer constituted earnings and correctly stated the applicable legal provisions and binding jurisprudence.⁹ It then turned to whether the Applicant subjectively knew that the statements were false or misleading and whether he had provided a reasonable explanation to show that his statements were not knowingly made.¹⁰ The General Division correctly stated the binding jurisprudence and the applicable legal tests¹¹ and, as such, did not err in law.

[23] The General Division considered the Applicant's arguments and the evidence on file. It considered his documents 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.

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

Issue 3: 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?

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

[26] The Applicant argues that he did not make false statements and that the Respondent made an error by sending the decision letter to the wrong address.

[27] The Applicant's submissions before the General Division, which included each of these arguments, were noted in the General Division decision.¹² 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 identifying a ground of appeal that is based on a reviewable error.

⁹ General Division decision at paras 10 to 22.

¹⁰ *Mootoo v Canada (Minister of Human Resources Development)*, 2003 FCA 206.

¹¹ *Supra* note 9 at paras 33 to 43.

¹² *Ibid.* at paras 13, 17 to 22, 27 to 29, and 37 to 43.

[28] 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.

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

CONCLUSION

[30] I am satisfied that the appeal has no reasonable chance of success, so the application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	C. R., self-represented
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