



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. M. v Canada Employment Insurance Commission*, 2019 SST 337

Tribunal File Number: AD-19-147

BETWEEN:

M. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 5, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. M. (Claimant), applied for Employment Insurance sickness benefits effective February 5, 2017. She reported to the Employment Insurance Commission (Commission) that her position had been eliminated during the week of May 21, 2017, and that she had received severance pay from the employer. On August 11, 2017, the Commission notified the Claimant that the amount received from the employer as separation pay had been allocated to her benefit period of May 28, 2017, to November 25, 2017.

[3] On April 4, 2018, the employer issued an amended Record of Employment indicating that it had paid the Claimant \$1,218.19 as notice of termination and \$41,908.95 as severance pay. At the time of its reconsideration, the Commission allowed the Claimant's application for the period of June 4, 2017, to October 7, 2017, to be antedated, which reduced the overpayment. The Claimant appealed the Commission's reconsideration decision to the General Division.

[4] The General Division found that the amounts received as severance and separation pay constituted earnings and that they had to be allocated to the Claimant's benefit period. The General Division also found that it did not have the jurisdiction to write off the overpayment.

[5] The Claimant is now seeking leave from the Tribunal to appeal the General Division decision.

[6] In support of her application for leave to appeal, the Claimant argues that she does not agree with the fact that she must repay the overpayment because she considers this debt to be the result of inaccurate information the Commission gave her. She had her file

transferred from one agent to the other without ever receiving clear answers. She was honest in her efforts and thinks she should not have to pay for the Commission's mistake. She invokes the right to a write-off.

[7] On February 27, 2019, the Tribunal sent the Claimant a letter requesting a detailed explanation of her grounds of appeal on the issue of the allocation of earnings. The Claimant again raised the Commission's poor handling of her file and the prejudice she faced.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

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

ANALYSIS

[11] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These 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.

[12] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a

reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal may succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[14] 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 could 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?

[15] In support of her application for leave to appeal, the Claimant argues that she does not agree with the fact that she must repay the overpayment because she considers this debt to be the result of inaccurate information the Commission gave her. She had her file transferred from one agent to the other without ever receiving clear answers. She was honest in her efforts and thinks she should not have to pay for the Commission's mistakes. She invokes the right to a write-off.

[16] The General Division found that the total amount of \$43,127.14 that the Claimant received as separation pay had to be allocated to a number of weeks that began with the Claimant's week of separation. Since the Claimant stopped working completely on May 30, 2017, the Commission correctly allocated this amount to Sunday, May 28, 2017, at the rate of the Claimant's weekly earnings in accordance with section 36(9) of the *Employment Insurance Regulations*.

[17] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised any issue concerning the allocation of earnings that could lead to the setting aside of the decision under review.

[18] As the General Division noted, the Tribunal does not have the jurisdiction to write off an overpayment. Only the Commission has the power to write off a benefit overpayment.

CONCLUSION

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

[20] The Tribunal notes the Commission's commitment to assess the Claimant's request for write-off following this decision.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. M., self-represented
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