



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. B. v Canada Employment Insurance Commission*, 2019 SST 379

Tribunal File Number: AD-19-168

BETWEEN:

**E. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: April 25, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, E. B., applied for and received Employment Insurance (EI) regular benefits in 2013, 2014 and 2015. The Respondent, the Canada Employment Insurance Commission (Commission), voided the claims after the Canada Revenue Agency (CRA) determined that the hours used to claim benefits were not insurable. The voiding of these claims resulted in an overpayment that the Applicant was required to repay. The Applicant requested reconsideration. The Commission maintained its decision.

[3] The Applicant appealed to the General Division of the Social Security Tribunal of Canada. The General Division convened an oral hearing in July 2016, and at the hearing, explained to the Applicant that the General Division could not ignore or modify the CRA's ruling on the insurability of employment. The General Division gave the Applicant time to appeal the CRA ruling to the Tax Court of Canada (TCC).

[4] The Applicant requested a late appeal to the TCC in January 2018 but provided no further information to the Tribunal. As a result, the General Division found that neither the Commission nor the Tribunal has any discretion on the CRA ruling and with 0 hours of insurable employment, the Applicant was not eligible to receive the benefits that she did.

[5] The Applicant filed an appeal with the Appeal Division and submitted that the General Division did not properly evaluate her case. She argues that her appeal of the CRA ruling before the TCC "was granted". She also submits new evidence.

[6] I find that the appeal does not have a reasonable chance of success because the Applicant's arguments do not disclose any reviewable errors.

## ISSUES

[7] Is there an arguable case that the General Division based its decision on an error of law or a serious error in its findings of fact?

[8] Is the Applicant's new evidence admissible at the Appeal Division?

## 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.<sup>1</sup>

[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 upon which the proposed appeal might succeed?<sup>2</sup>

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> 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 take into account that her appeal of the CRA ruling to the TCC has "been granted."<sup>5</sup>

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).

<sup>2</sup> *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.

<sup>3</sup> DESD Act at s. 58(2).

<sup>4</sup> *Ibid.* at s. 58(1).

<sup>5</sup> AD1-3: Application for leave to appeal to the Appeal Division, at p.3, box 5.

**Issue 1: Is there an arguable case that the General Division based its decision on an error of law or a serious error in the findings of fact?**

[13] I find that there is no arguable case that the General Division erred in law or based its decision on a serious error in the findings of fact.

[14] This appeal turns on whether the Applicant had enough insurable employment to qualify for EI benefits.<sup>6</sup> The CRA had determined that the Applicant had 0 hours of insurable employment in the relevant period.<sup>7</sup> The Commission was required to abide by the CRA's decision and did not have the authority to determine otherwise. With no hours of insurable employment, the Applicant was not eligible for the EI benefits that she had received.

[15] Contrary to the Applicant's assertion that the TCC granted her appeal, the appeal record shows only that the Applicant requested a late appeal at the TCC in January 2018.<sup>8</sup> From January 2018 to February 2019, when the General Division issued its decision, the Applicant had not informed the Tribunal of any progress to her TCC request.

[16] The General Division correctly stated that it does not have any discretion to modify the CRA ruling or the conditions for eligibility set out in the EI Act and the EI Regulations.<sup>9</sup> It also noted that the Applicant had not updated the Tribunal on her late appeal of that ruling to the TCC. The General Division, therefore, dismissed the appeal.

[17] The General Division correctly stated its jurisdiction and applied the relevant legislative provisions. Having 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. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction or that it erred in law in coming to its decision.

[18] The appeal does not have a reasonable chance of success based on these grounds.

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<sup>6</sup> *Employment Insurance Act*, ss. 7 and 7.1.

<sup>7</sup> GD3-43: Insurability ruling from the CRA.

<sup>8</sup> GD11: Additional representations of the Commission, January 26, 2018.

<sup>9</sup> General Division decision, at paras. 6 to 12.

**Issue 2: Is the Applicant's new evidence admissible at the Appeal Division?**

[19] The Applicant's new evidence is not admissible at the Appeal Division.

[20] The application for leave to appeal includes the following documents:

- a) A letter from the TCC, dated February 14, 2018, acknowledging the Applicant's filing of an application to extend the time to file an appeal.
- b) A TCC Notice of Hearing of that application, for a hearing on November 20, 2018.
- c) An email from the TCC, dated October 18, 2018, confirming that the Applicant's request for an adjournment of the November 2018 hearing was granted.

[21] The Applicant submits these documents to show that she was "granted an appeal."

[22] The Tribunal wrote to the Applicant to explain that the Appeal Division cannot consider new evidence, except in limited situations. It noted that another option was for the Applicant to make an application to rescind or amend the General Division decision based on new evidence. It asked the Applicant to reply, by April 8, 2019, and tell the Tribunal whether she would like to file an application to rescind or amend her General Division decision.<sup>10</sup>

[23] The Applicant's response stated that she does not understand what she needs to do. She argues that it was unfair and unjust for the General Division to dismiss her appeal when she was "granted an appeal" on the CRA ruling. The Applicant also attached copies of documents that are already in the appeal record.

[24] I take it from the Applicant's response that she wants to proceed with this application for leave to appeal and that she does not want to file an application (with the General Division) to rescind or amend the General Division decision. I note that there is a time limit within which such an application must be filed, if the Applicant reconsiders.<sup>11</sup>

[25] New evidence is not a ground of appeal under s. 58 of the DESD Act. It was incumbent upon the Applicant to present any evidence she had to the General Division. The Tribunal sent

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<sup>10</sup> Letter dated March 15, 2019.

<sup>11</sup> DESD Act at s. 66(2).

requests for updates to Applicant and to the Commission. However, the Applicant filed new evidence only after the General Division rendered its decision. It may be possible for the Applicant to file an application to rescind or amend the General Division decision based on this evidence, but the new evidence is not admissible at the Appeal Division on this application.

[26] The new evidence was not in the record before the General Division. Therefore, it cannot form the basis of an argument that the General Division made a reviewable error by not considering the information the evidence allegedly contains.

[27] The appeal does not have a reasonable chance of success based on the new evidence.

[28] As an additional comment, the new evidence submitted by the Applicant does not establish that her appeal to the TCC was granted. At most, it appears that the Applicant's hearing to request that she be permitted to file a late appeal with the TCC was adjourned.<sup>12</sup> At present, the Applicant does not have permission to file a late appeal at the TCC. The TCC would have to grant permission to file a late appeal, complete its appeal process, and issue a decision that overturns the CRA ruling, in order for the Applicant's appeal of the CRA ruling to be granted. The Applicant's assertion that she was granted an appeal is incorrect.

## CONCLUSION

[29] 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:	E. B., self-represented
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<sup>12</sup> The email from the TCC, dated October 18, 2018, noted that the Applicant requested an adjournment.