



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. R. v Canada Employment Insurance Commission*, 2019 SST 375

Tribunal File Number: AD-19-204

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: April 24, 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) regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), cancelled the claim after the Canada Revenue Agency (CRA) determined that the hours used to claim benefits were not insurable. This cancellation resulted in an overpayment that the Applicant was required to repay. In addition, the Commission imposed a penalty on the Applicant for failure to declare her relationship with her employer. 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 March 2018, 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.

[4] The Applicant 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 EI benefits that she did. The General Division also found that the Applicant knowingly made false representations to the Commission by failing to report her relationship to her employer.

[5] The Applicant filed an appeal with the Appeal Division and submitted documents contained in the General Division appeal record with her application for leave to appeal. She argues that the General Division would not change her EI decision because of the CRA ruling and the CRA would not change its ruling.

[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.

ISSUE

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

ANALYSIS

[8] 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.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 an arguable ground upon which the proposed 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.⁴ 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.

[11] The Applicant submits that the General Division refused to change the EI decision and directed her to appeal the CRA ruling. However, the Applicant did not appeal the CRA ruling because she was told by a TCC agent that the CRA ruling would not be changed.

Is there an arguable case that the General Division refused to exercise its jurisdiction or based its decision on an error of law or a serious error in the findings of fact?

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

¹ *Department of Employment and Social Development Act* (DESD Act) at 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 at s. 58(2).

⁴ *Ibid.* at s. 58(1).

[13] This appeal turns on whether the Applicant had enough insurable employment to qualify for EI benefits.⁵ The CRA had determined that the Applicant had 0 hours of insurable employment in the relevant period.⁶ 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.

[14] The Applicant was advised repeatedly that the only way to request a change to the CRA ruling is to appeal that ruling the TCC.

[15] Contrary to the terms of the adjournment granted by the General Division, the Applicant did not appeal the CRA ruling to the TCC. In her application for leave to appeal to the Appeal Division, the Applicant states that she called the court, as directed by the General Division, and she was told by a court agent that the CRA ruling would not be changed. Therefore, she "accepted this as the end of trying to get the [CRA] decision reversed."⁷

[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.⁸ It also noted that the Applicant had not updated the Tribunal on her appeal of that ruling to the TCC. The General Division, therefore, dismissed the appeal.

[17] The General Division also correctly stated the jurisprudence relating to false representations and the Commission's exercise of discretion to impose a penalty. After reviewing the evidence and applying the binding jurisprudence, the General Division concluded that the Commission rendered its decision to impose a penalty in a judicial manner.

[18] The General Division correctly stated its jurisdiction and applied the relevant legislative provisions and jurisprudence. 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

⁵ *Employment Insurance Act*, ss. 7 and 7.1.

⁶ GD3-18: Insurability ruling from the CRA.

⁷ Application for leave to appeal at p. AD1-4.

⁸ General Division decision, at paras. 11 and 16.

of natural justice or otherwise acted beyond or refused to exercise its jurisdiction or that it erred in law in coming to its decision.

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

CONCLUSION

[20] 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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