Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *J. L. v Canada Employment Insurance Commission*, 2019 SST 394

Tribunal File Number: AD-19-176

BETWEEN:

J. L.

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 30, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. L., applied for Employment Insurance (EI) benefits in 2017 and received EI regular benefits for 38 weeks, from February 5, 2017 to November 4, 2017. While on EI benefits, the Applicant received a settlement from her former employer. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the settlement money constituted earnings and allocated those earnings to an 8-week period during the Applicant's benefit period. This allocation created an overpayment. Because the allocation prevented payment of benefits to the Applicant for eight weeks, the Commission extended the benefit period and the Applicant was paid for eight weeks of benefits after November 4, 2017.

[3] The Applicant successfully appealed the allocation of her settlement money to the General Division of the Social Security Tribunal of Canada. As a result, the Commission removed the allocation and the benefits paid during the 8-week extension became an 8-week overpayment. The Applicant had 38 weeks of entitlement and was paid 46 weeks of benefits.

[4] The Applicant requested a reconsideration and submitted that the overpayment resulted from the Commission's failure to follow due diligence. The Commission maintained its initial decision.

[5] The Applicant appealed to the General Division. The General Division found that the Commission correctly calculated the Applicant's weeks of entitlement to EI benefits at 38 weeks. However, the Applicant had received 8 weeks of additional benefits to which she was not entitled and, therefore, she was responsible for repaying the overpayment.

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

ISSUE

[7] Is there an arguable case that the General Division made an error of law or a serious error in its findings of fact by concluding that the Applicant received an overpayment of EI benefits that she is required to repay?

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 on 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 success[3] 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 was wrong because the overpayment resulted from the Commission's errors and the Commission, not she, should be held responsible for those errors. From her perspective, the Commission's incorrect allocation of the settlement money triggered the extension of her benefit period and that extension created the overpayment.

---

[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).

Is there an arguable case that the General Division made an error of law or a serious error in its findings of fact by concluding that the Applicant received an overpayment of EI benefits that she is required to repay?

[12] I find that there is no arguable case that the General Division erred in law 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 does not dispute having received 46 weeks of EI benefits. However, she maintains that the 8-week overpayment of benefits resulted from the Commission's incorrect allocation of the settlement money and the extension of her benefit period that she did not request and was not aware of at the time.

[14] The General Division stated that the maximum number of weeks for which benefits may be paid is determined by section 12(2) of the EI Act.[5] This was a correct statement of the applicable legislative provision. Applying this provision, the General Division concluded that the Commission correctly calculated the Applicant's weeks of entitlement to regular EI benefits to be 38 weeks. I agree with this conclusion.

[15] On the subject of the Commission's conduct, the General Division referred to and applied binding Federal Court of Appeal jurisprudence.[6] The binding jurisprudence establishes that:

a) Misinformation by the Commission is not a basis for relief from the operation of the *Employment Insurance Act* and *Employment Insurance Regulations*.

b) This Tribunal must apply the EI legislation and cannot ignore, re-fashion, circumvent, or re-write the law.

c) This Tribunal does not have the authority to write-off or waive a claimant's overpayment.

[16] The application for leave to appeal refers to previous Appeal Division decisions[7] that the Applicant submits are relevant to this matter. She relies on them to argue that the Appeal

---

[5] General Division decision at para. 5.
[6] *Ibid.* at paras. 7 to 9.
[7] *R.F. v Canada Employment Insurance Commission*, 2015 SSTAD 967; *A.Q. v Minister of Employment and Social Development*, 2015 SSTAD 894.

Division can cancel or waive her overpayment. These cases, however, do not support the Applicant's position. The Applicant quotes passages in these decisions that summarize the claimants' arguments in those matters; these passages are not the findings of the Appeal Division. The Appeal Division has consistently held that mistakes made by Commission agents do not excuse a claimant from having to repay an overpayment and that this Tribunal does not have the authority to write-off (cancel or waive) an overpayment.[8] The Federal Court of Appeal has been clear on these points.

[17] The General Division correctly stated and applied the binding jurisprudence and did not err in law.

[18] The Applicant argues that the General Division erred in law by failing to consider her post-hearing documents. These documents included a note written by the Applicant and a Service Canada statement providing an access code for the Applicant's submission of reports after November 4, 2017 (the end of the 38-week period).

[19] The Tribunal received the post-hearing documents on February 28, 2019.[9] The General Division decision was issued on March 4, 2019. The Applicant argues that the General Division member had not received these documents before rendering a decision. As the date-stamp on the indexed copy shows, the documents were received before the decision was rendered. In addition, receipt of these documents was acknowledged on March 1, 2019.[10]

[20] It is not necessary to mention every document in the appeal record in the General Division decision. Moreover, the post-hearing documents were intended by the Applicant to support submissions that she had previously made in writing and orally at the hearing. The General Division considered these submissions and the appeal record in making its decision.

[21] The General Division did not err in law. The appeal has no reasonable chance of success based on this ground.

---

[8] *Ibid.* R.F. at paras. 24 and 25.
[9] Indexed as GD6 in the appeal record.
[10] Tribunal letter, dated March 1, 2019.

[22] The General Division considered the evidence in the documentary record. It also considered the testimony that the Applicant gave during the teleconference hearing. The General Division considered the Applicant's submissions that the Commission should be accountable for misinformation given by its agents (with whom the Applicant spoke).

[23] In the application for leave to appeal, the Applicant argues that she was misinformed by Service Canada agents. In its decision, the General Division noted the Applicant's submissions before it. Essentially, the Applicant seeks to reargue her case at the Appeal Division using arguments similar to those she made at the General Division. Simply repeating her arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[24] The appeal has no reasonable chance of success based on the ground of serious error in the findings of fact.

[25] As an additional note, the application for leave to appeal states that the Applicant wants to appeal the $412 overpayment in 2018. The General Division concluded correctly that the $412 overpayment relates the Applicant's June 2018 claim for benefits, which is not the subject of this appeal.[11]

CONCLUSION

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

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	J. L., self-represented

[11] General Division decision at para. 8.