



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *I. B. v Canada Employment Insurance Commission*, 2019 SST 497

Tribunal File Number: AD-18-618

BETWEEN:

I. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 21, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, I. B. (Claimant), applied for benefits. The employer has indicated on the Record of Employment that it paid the Claimant \$635.40 for the Claimant's last weeks of work and \$50.40 in vacation pay after the termination of her employment because of a fire in the employer's building. The Commission considered this sum earnings and allocated it in such a way that it was deducted from the Claimant's Employment Insurance benefits. The Claimant disputed receiving the sums in question from the employer. The Commission denied the reconsideration request. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the sums the Claimant received from her employer constituted earnings that should be allocated under section 36 of the *Employment Insurance Regulations* (EI Regulations).

[4] The Claimant now seeks leave to appeal the General Division decision.

[5] In support of her application for leave to appeal, the Claimant argued that she never received the vacation pay from the employer and that she wants to see evidence of the payment from her employer.

[6] The Tribunal must determine 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.

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

ISSUE

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

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on 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, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

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

[12] 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?

[13] The Tribunal tried many times and in various ways to contact the Claimant but was unsuccessful. The Claimant was obliged to inform the Tribunal of any changes to her contact information so that she could be informed of the procedure's progress. She did

not do this.¹ The Tribunal therefore gives the decision on the application for leave to appeal the Claimant filed.

[14] In support of her application for leave to appeal, the Claimant argued that she never received the vacation pay from the employer and that she wants to see evidence of the payment from her employer.

[15] The employer informed the Commission that the Claimant received \$50.40 in vacation pay after the restaurant closed because of a fire at the business.²

[16] The General Division therefore determined, based on the evidence, that the sum the Claimant received as vacation pay should be allocated according to section 36 of the EI Regulations.

[17] The Federal Court of Appeal has determined that the burden of proof for disputing the employer's pay information rests with the claimant and that mere allegations intended to cast doubt are insufficient.³

[18] It is therefore not sufficient for a claimant to merely cast doubt on the truthfulness of the employer's statements. They must provide countering evidence before the General Division, which the Claimant did not do. When faced with the evidence before it, the General Division could not simply come to a different conclusion than the one it made.

[19] After reviewing the appeal file, the General Division's 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 an issue that could lead to the setting aside of the decision under review.

¹ *Social Security Tribunal Regulations*, s 6.

² GD3-22.

³ *Déry v Canada (Attorney General)*, 2008 FCA 291.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	I. B., self-represented
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