



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *H. V. v Canada Employment Insurance Commission*, 2019 SST 496

Tribunal File Number: AD-19-240

BETWEEN:

**H. V.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Shirley Netten

DATE OF DECISION: May 17, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] H. V. (Claimant) received employment insurance (EI) benefits following a layoff from employment in May 2018. In November 2018, the Canada Employment Insurance Commission (Commission) determined that separation payments of \$2307.20 would be applied against the Claimant's EI benefits. On reconsideration, the Commission reduced the amount to be allocated to \$1747.20. This was the amount that the Claimant had told the Commission he had received in separation payments, and this was the amount confirmed by the employer.

[3] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal (Tribunal), because his amended Record of Employment (ROE) included incorrect figures. The General Division summarily dismissed his appeal, on the basis that the appeal was "bound to fail." I find no error in that decision, and consequently the Claimant's appeal is dismissed.

### **ISSUE**

[4] Did the General Division make a reviewable error? More specifically, did the General Division make an error of fact, law or jurisdiction, or fail to observe a principle of natural justice?

## ANALYSIS

### Background

[5] The *Employment Insurance Act* (EI Act) states that a party can appeal to the Tribunal if dissatisfied with a reconsideration decision of the Commission.<sup>1</sup> In this case, the Commission issued a reconsideration decision on December 12, 2018. It stated:

#### **Issue: Earnings**

The decision communicated to you on November 16, 2018 regarding this issue has been changed to the following new decision:

We contacted your employer and they said that they gave you 1747.20 as pay in lieu. This amount represented 3 weeks of pay. So we allocated the money from August 26, 2018 until September 15, 2018. As you said the amount of 560.00\$ was a mistake written on the record of Employment. We only allocated the amount of 1747.20\$

[6] The Claimant appealed this decision to the Tribunal's General Division. Under the *Department of Employment and Social Development Act* (DESDA), the General Division "must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success."<sup>2</sup> This is what the General Division did.

[7] The Claimant then appealed to the Tribunal's Appeal Division. He explained in his application that the Commission had recognized the correct sum of \$1747.20 as termination pay, but that the amount showing on his ROE of December 10, 2018 (\$1680) is wrong. He also raised a concern about the small difference between the amount of benefits he received and the amount showing on the T4E(Q) issued by Service Canada. In response, the Commission advised that it did not have a copy of the amended ROE. The Commission also advised that there was no overpayment from the allocation of separation payments, and that the additional \$94 showing on the Claimant's T4E(Q) reflected an overpayment for an unrelated matter.

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<sup>1</sup> EI Act, ss 112, 113

<sup>2</sup> DESDA, s 53(1)

[8] At a pre-hearing conference, the Claimant explained that his employer would not change his ROE and when he inquired at Service Canada about the error on his ROE he was told to appeal to the Tribunal. The Claimant stated that it was unfair that the General Division did not deal with his concerns, as he has nowhere else to turn. He is fearful that the error on his ROE will lead to another, inaccurate, allocation against his claim.

### **Grounds of appeal**

[9] An appeal to the Appeal Division can succeed only if the General Division has committed one of the following errors:<sup>3</sup>

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) the General Division 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] The Claimant wanted the General Division to ensure that he was given a ROE with the correct information. The General Division stated that it is “not the Tribunal’s role to correct information appearing on a record of employment.” I do not find that the General Division made an error of jurisdiction by failing to address the accuracy of the amended ROE (or the T4E(Q)). It is only the Commission’s reconsideration decision that was, and that could be, appealed to the Tribunal.<sup>4</sup> That decision was about the dollar amount of separation payments to be allocated as earnings. The ROE, reissued by the employer on December 10, 2018, was not a decision of the Commission, nor did it affect the Commission’s reconsideration decision.

[11] The Claimant has not identified a breach of natural justice by the General Division. The General Division held a pre-hearing conference, provided notice of the possibility of a summary

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<sup>3</sup> DESDA, s 58(1)

<sup>4</sup> EI Act, s 112, 113; see paragraph 5 of this decision

dismissal, and gave the Claimant an opportunity to provide further submissions.<sup>5</sup> In these ways, procedural fairness was respected.

[12] The Claimant has not identified an erroneous finding of fact made by the General Division. The General Division correctly referenced the underlying facts, including the agreed-upon amount of separation payments underlying the decision on allocation of earnings.

[13] The Claimant has not identified an error of law made by the General Division. The General Division correctly stated and applied the legal test for summary dismissal. There was no reasonable chance of success on appeal of the reconsideration decision, because the Claimant agreed with that decision.

[14] In the absence of one of these errors, I dismiss the Claimant's appeal of the General Division decision.

#### **Recourse for the claimant**

[15] The Claimant's primary and continuing concern is the content of the ROE reissued by his employer on December 10, 2018,<sup>6</sup> following the intervention of Service Canada on that date. While he has been reassured that the Commission's allocation decision is a valid and binding decision, he remains extremely concerned that there could be negative consequences due to errors on his amended ROE. The Claimant has been unable to navigate the system on his own, and it appears that he was given inaccurate information with respect to his recourse rights. The Claimant has now gone through two levels of appeal at this Tribunal, for a matter which cannot be addressed by the Tribunal. This is understandably frustrating to the Claimant. Unfortunately, the Commission did not participate in the pre-hearing conference. To the extent that the Claimant continues to have concerns about his ROE, his only option is to contact Service Canada again to request assistance.

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<sup>5</sup> As required by s. 22 of the *Social Security Tribunal Regulations*

<sup>6</sup> At GD2-10

**CONCLUSION**

[16] The appeal is dismissed.

Shirley Netten  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
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