



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. L. c Canada Employment Insurance Commission*, 2019 SST 509

Tribunal File Number: AD-18-517

BETWEEN:

J. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: May 24, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. L. (Claimant), applied for and began receiving Employment Insurance regular benefits. The Canada Employment Insurance Commission (Commission) subsequently learned that the Claimant had two registered businesses. The Claimant countered that he was eligible for benefits under his province's self-employment assistance program. If he were approved for the program, he would be deemed unemployed, capable of and available for work, and therefore eligible for Employment Insurance benefits.¹ The Commission rejected the Claimant's argument and found that he was self-employed and therefore ineligible for benefits.² This effectively resulted in an overpayment. The Claimant appealed the Commission's reconsideration decision to the General Division, which dismissed the appeal. The General Division determined that it did not have any jurisdiction to address the issue of the Claimant's eligibility for benefits under the self-employment assistance program.

[3] The Claimant is now seeking leave to appeal the General Division's decision. He maintains that he should be eligible for his province's self-employment assistance program. To determine whether leave to appeal can be granted, I must decide whether the appeal has a reasonable chance of success. Because I am not satisfied that the appeal has a reasonable chance of success, I am refusing leave to appeal.

PRELIMINARY MATTERS

[4] I held a case management conference on May 7, 2019, to address jurisdictional concerns. I queried whether the Appeal Division had any authority to decide any issues relating to any self-employment assistance programs set up under the *Employment Insurance Act*. Subsection 25(2) of the *Employment Insurance Act* stipulates that a decision of the Commission about the referral

¹ See section 25 of the *Employment Insurance Act*.

² Commission's initial decision dated October 21, 2017, at GD3-142 and 143, and reconsideration decision dated January 9, 2018, at GD3-148 to 150.

of a claimant to a course, program or other employment activity is not subject to review by the Commission under section 112. If the Commission does not make a decision under section 112, then there is no appeal to the Social Security Development under section 113. That is the situation before me.

[5] The Claimant notes that the eligibility requirements for his province's self-employment assistance program have changed since he applied for the program. The changes address the very problems that he encountered when he went through the application process. When he applied, the contractor who was responsible for administering the program in Newfoundland caused him to lose what he claims should have been certain approval into the program and eligibility for Employment Insurance benefits. The Claimant says that this scenario would no longer occur under the revised program. He also states that the province has told him that if he were faced with the same circumstances, it would readily approve him now for the program.

[6] The Commission asserts that the Appeal Division does not have any jurisdiction to decide whether the Claimant qualified for the self-employment assistance program, such that he might be eligible for Employment Insurance benefits. The Commission notes that under the *Employment Insurance Act*, the administration of the self-employment assistance program has been delegated to the provinces. The Commission concedes that if the program had or were to approve the Claimant, he would be entitled to benefits. However, the Commission maintains that it is not involved in the self-employment assistance program's approval process, and until the province approves him, it is unable to find him eligible for Employment Insurance benefits. The Commission suggests that the Claimant's recourse lies with provincial authorities.

[7] Sections 112 and 113 of the *Employment Insurance Act* do not confer any jurisdiction on the Social Security Tribunal to address issues that relate to the self-employed assistance program. As such, although the Claimant calls upon me to decide whether he should have been approved for the program, that question is best left for the province. And, although I indicated that I would be prepared to receive further oral submissions, I see no utility in holding any further hearings in this matter.

ISSUE

[8] The only issue before me is whether there is an arguable case that the General Division refused to exercise its jurisdiction.

ANALYSIS

General Principles

[9] If I am to grant leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) and that the appeal has a reasonable chance of success. The grounds of appeal under subsection 58(1) of the DESDA are limited to the following:

- (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 Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.³ This is a relatively low bar. At the leave to appeal stage, it is a lower hurdle to meet than the one that must be met on the hearing of the appeal on the merits. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v Canada (Attorney General)*.⁴

Is there an arguable case that the General Division refused to exercise its jurisdiction?

[11] The Claimant wants to have his application to his province's self-employment assistance program backdated and is asking that this issue be placed before the Social Security Tribunal. He

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ *Joseph v Canada (Attorney General)*, 2017 FC 391.

claims that he satisfies all of the necessary requirements for acceptance to the program but the contractor who was responsible for administering the program in Newfoundland caused him to lose approval into the program and leave him ineligible for Employment Insurance benefits.

[12] The Claimant notes that the General Division wrote “the denial of benefits under the Self-employment Assistance Program is not the issue before me therefore I cannot rule or comment on this decision by the Commission or its designated authority.” The Claimant is not directly challenging the General Division’s decision, but he maintains that he fulfilled all of the requirements of the program and therefore should be entitled to receive benefits.

[13] As I have noted above, the Social Security Tribunal does not have any jurisdiction to decide any issues relating to any self-employment assistance programs set up under the *Employment Insurance Act*. Therefore, I am not satisfied that the General Division refused to exercise its jurisdiction. Accordingly, the application for leave to appeal is refused. As the Commission noted, the Claimant’s options lie with the province to remedy any issues that arose from its own administrative problems.

CONCLUSION

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

Janet Lew
Member, Appeal Division

APPLICANT:	J. L., Self-represented
RESPONDENT:	Isabelle Thiffault, for the Respondent