



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. K. v Canada Employment Insurance Commission*, 2019 SST 834

Tribunal File Number: AD-19-561

BETWEEN:

S. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: August 30, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. K. (Claimant), is seeking leave to appeal the General Division's decision dated August 2, 2019. Leave to appeal means that an applicant has to get permission from the Appeal Division before they can move on to the next stage of the appeal process. The Claimant was late when she filed an appeal with the General Division. The General Division decided against giving an extension of time to the Claimant for her to file a notice of appeal because it found that she did not have an arguable case. I have to decide whether the appeal before me has a reasonable chance of success. I am not satisfied that the appeal has a reasonable chance of success, so I am refusing the Claimant's application for leave to appeal.

FACTUAL BACKGROUND

[3] The Claimant applied for and received Employment Insurance benefits. She explained that she estimated her income because she did not receive any paycheque stubs. She inadvertently underreported some of her employment income, including a referral bonus that she did not know her employer was going to pay. The Respondent, the Canada Employment Insurance Commission, adjusted her earnings and allocated them to her claim. This resulted in an overpayment of \$767.00.¹ On reconsideration, the Commission did not change its mind about the amount of the overpayment.² The Claimant appealed the Commission's reconsideration decision to the General Division, but she was late when she filed her notice of appeal with the General Division. The General Division found that it was against the interests of justice to grant an extension of time to the Claimant for her to file an appeal.

¹ See Commission's letter dated January 24, 2019, at GD3-26 to GD3-28.

² See Commission's reconsideration decision dated May 14, 2019, at GD3-35 to GD3-36.

ISSUE

[4] Are there any grounds of appeal? If so, does the appeal have a reasonable chance of success?

ANALYSIS

[5] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the three grounds of appeal listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The appeal also has to have a reasonable chance of success.

[6] The only three grounds of appeal under subsection 58(1) of the DESDA are:

- (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.

[7] A reasonable chance of success is the same thing as an arguable case at law.³ This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

Are there any grounds of appeal?

[8] The Claimant says that she does not disagree with the General Division's decision. Indeed, she acknowledges that she does not see any grounds of appeal. I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to account for any of the key pieces of evidence before it,

³ This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

when it decided whether to grant an extension of time to the Claimant to file her notice of appeal. The General Division considered all of the relevant facts. The General Division member's summary of the facts is consistent with the evidentiary record. As such, I am not satisfied that there is an arguable case or that the appeal has a reasonable chance of success.

[9] The Claimant is requesting a waiver of any remaining overpayment of Employment Insurance benefits for two reasons. For one, the Canada Revenue Agency already collected much of the overpayment of \$767.00 by withholding her income tax refund and two, she needs the funds because she has children to raise and debts to pay. I do not have any power to waive any of the overpayment. As the General Division member noted from the submissions of the Respondent, the Canada Employment Insurance Commission, if the Claimant is experiencing financial hardship, she can contact the Debt Management Call Centre at 1-866-864-5823 to arrange a repayment plan.

CONCLUSION

[10] As there are no grounds of appeal, the application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

APPLICANT:	S. K., Self-represented
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