



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. M. v Canada Employment Insurance Commission*, 2019 SST 975

Tribunal File Number: AD-19-495

BETWEEN:

**N. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 12, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, N. M. (the Claimant), applied for regular Employment Insurance benefits in February 2016, and established a benefit period. He worked for about two weeks for a placement agency, but continued to collect benefits. He did not report his employment and earnings to the Respondent, the Canada Employment Insurance Commission (Commission), but continued to collect benefits. He took a leave from his employment near the end of February 2016 but he did not return to work.

[3] When the Commission later discovered that the Claimant had worked while on benefits, it made decisions on several issues. It determined that the Claimant's wages were earnings and should be applied against his benefits, and also that he had knowingly made a false statement about his employment and wages. In addition, the Commission decided that the Claimant had voluntarily left his employment without just cause. As a result, the Commission found that he had been overpaid by the amount of his undeclared earnings as well as the amount of the benefits that were paid to him since the date that he left his employment. It assessed a penalty and a notice of violation in relation to the false statement.

[4] The Claimant asked the Commission to reconsider, but the Commission maintained its initial decisions. The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal on all of the issues. The Claimant is now seeking leave to appeal to the Appeal Division.

[5] The Claimant has no reasonable chance of success. He has not made out an arguable case that the General Division made an error under any of the grounds of appeal described in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

## ISSUE

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice, made an error of jurisdiction, made an error of law, or based its decision on an erroneous finding of fact?

## ANALYSIS

### General Principles

[7] The Appeal Division may intervene in a decision of the General Division, only if it can find that the General Division has made one of the types of errors described by the “grounds of appeal” in s.58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[8] The only grounds of appeal are described below:

- 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.

[9] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case<sup>1</sup>.

**Issue: Is there an arguable case that the General Division failed to observe a principle of natural justice, made an error of jurisdiction, made an error of law, or based its decision on an erroneous finding of fact?**

[10] In his leave to appeal application, the Claimant did not state the ground or grounds of appeal that he wished to argue. It is clear from his submission that he strongly disagrees with the

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<sup>1</sup> *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 ; *Ingram v. Canada (Attorney General)*, 2017 FC 259

result of his appeal to the General Division but he did not identify any error in the General Division decision that I could relate to any of the grounds of appeal.

[11] I wrote to the Claimant on July 26, 2019, to ask him to send the Tribunal additional information about his appeal. I specifically asked that he explain in detail how the General Division may have erred under one of the grounds of appeal. I set out the grounds of appeal and supplied an example of each. The Claimant responded on August 30, 2019, with a second copy of a letter that had been attached to his original application. This did not assist me.

[12] I have reviewed the appeal files for potential errors, but there is no suggestion on the file that the General Division failed to observe the Claimant's natural justice rights or that the General Division made a jurisdictional error, and no other error of law was apparent to me.

[13] Because the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal,<sup>2</sup> I reviewed the file to determine if significant evidence might have been ignored or overlooked and that might, therefore, raise an arguable case that the General Division based its decision on an erroneous finding of fact. Unfortunately for the Claimant, I have not discovered any instance of this.

[14] I appreciate that the Claimant disagrees with the General Division's decision and that he may also disagree with the manner in which the General Division weighed and analyzed the evidence and with its findings. However, he cannot establish a ground of appeal under s. 58(1) of the DESD Act by simply disagreeing with the findings.<sup>3</sup>

[15] There is no arguable case that the General Division based its decision on an erroneous finding of fact under s. 58(1)(c) of the DESD Act.

[16] The Claimant has no reasonable chance of success on appeal.

## **CONCLUSION**

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

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<sup>2</sup> *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

<sup>3</sup> *Griffin v. Canada (Attorney General)*, 2016 FC 874

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVES:	N. M., Self-represented
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