



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. T. v Canada Employment Insurance Commission*, 2019 TSS 1027

Tribunal File Number: AD-19-671

BETWEEN:

**B. T.**

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: October 11, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, B. T. (Claimant) applied for Employment Insurance and received Employment Insurance benefits in 2016. The Respondent, the Canada Employment Insurance Commission (Commission), based the Claimant's benefits on incorrect Record of Employment information provided by her employer's payroll system. The Commission did not discover the error until the Claimant applied for Employment Insurance again in 2018, and the payroll system again gave incorrect information to the Commission. This time the Claimant noticed that something was not right very quickly and brought it to the attention of the Commission. The Commission agreed and adjusted the Claimant's benefit entitlement, which resulted in a small overpayment. The Commission also investigated the 2016 claim, and it reduced the Claimant's entitlement to both the weekly benefit entitlement and the number of weeks of entitlement, resulting in a more substantial overpayment.

[3] The Claimant asked that the Commission reconsider both decisions. The Commission reduced the amount of the overpayment under the 2016 claim, but maintained its decision on the 2018 claim. The Claimant appealed both reconsideration decisions to the General Division, questioning why she should be held responsible for someone else's mistake and challenging the calculation of the family supplement. The General Division joined the two appeals based on their similar facts, and then dismissed both appeals.

[4] The Claimant appealed to the Appeal Division, which upheld the overpayment determination for both the 2016 and 2018 claims. However, the Appeal Division could not confirm that the Commission had correctly determined the amount of the Family Supplement or provided the correct amount to the Claimant. The Appeal Division returned the matter to the General Division to reconsider this question alone.

[5] The General Division determined that the Commission had correctly adjusted and accounted for the Claimant's entitlement to the Family Supplement and it dismissed the appeal. The Claimant now seeks leave to appeal to the Appeal Division once again.

[6] The Claimant has no reasonable chance of success on appeal. She has not made out an arguable case that the General Division erred in law and I have not discovered an arguable case that the General Division based its decision on an erroneous finding of fact.

## **ISSUE**

[7] Did the General Division err in law by failing to consider the Claimant's obligation to repay the overpayment and her financial ability to do so?

## **ANALYSIS**

### **General Principles**

[8] 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 section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

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

[10] The grounds of appeal under section 58(1) of the DESD Act are as follows:

- 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

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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.

- 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.

**Issue 1: Did the General Division err in law by failing to consider the Claimant's obligation to repay the overpayment and her financial ability to do so?**

[11] The Claimant is insisting that her main concern is her ability to repay the overpayment and that the General Division ignored this issue. However, I returned the appeal to the General Division to reconsider the question of whether the Family Supplement was correctly calculated and properly included. This was the only matter that I referred to the General Division and the only matter over which it had jurisdiction.

[12] In my first decision (AD-19-4), I confirmed that the General Division had been correct in finding that it had no ability to write off the overpayment debt. This remains true. The General Division had no jurisdiction to consider whether the overpayment debt should be written off, and it did not err by failing to address this issue. If the Claimant believes the debt should be written off because of her financial circumstances, she can ask the Commission directly to write it off,<sup>2</sup> but no appeal lies to either the General Division or the Appeal Division if the Commission were to refuse such a request.<sup>3</sup>

[13] The Claimant has not suggested that there is any other error of law in the General Division's recent decision, and she has not pointed to any evidence that the General Division ignored or misunderstood when it found that the Family Supplement had been properly calculated. In fact, the General Division obtained from the Commission an explanation of how the Family Supplement was calculated and paid (RGD3), which was the evidence on which it relied to dismiss the appeal. According to the General Division, the Claimant testified that she did not dispute the evidence in RGD3.<sup>4</sup>

[14] I have reviewed the record that was before the General Division but I cannot find any instance where the General Division ignored or misunderstood evidence relevant to its decision on the Family Supplement.

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<sup>2</sup> Section 56 of the *Employment Insurance Regulations*

<sup>3</sup> Section 112.1 and section 113 of the *Employment Insurance Act*

<sup>4</sup> General Division decision, para. 12.

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

**CONCLUSION**

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

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVES:	B. T., Self-represented
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