



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. C. v Canada Employment Insurance Commission*, 2019 SST 1034

Tribunal File Number: AD-19-583

BETWEEN:

**E. C.**

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 18, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, E. C. (Claimant), left her employment in March 2018. She applied for and received Employment Insurance benefits. In May 2018, the Claimant's employer paid her an additional amount representing vacation pay and severance, which the Claimant immediately reported to the Respondent, the Canada Employment Insurance Commission (Commission). On January 29, 2019, the Commission wrote the Claimant to inform her that it had allocated this additional payment to the weeks of benefits from March 25, 2018, to April 21, 2018, which resulted in an overpayment. The Commission maintained this decision in response to the Claimant's request for a reconsideration.

[3] The Claimant appealed to the General Division of the Social Security Tribunal but the General Division dismissed her appeal. She now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. The Claimant has not pointed to any evidence that was ignored or misunderstood and has not made out an arguable case that the General Division erred by basing its decision on an erroneous finding of fact.

### **ISSUE**

[5] Is there an arguable case that the General Division based its decision on an erroneous finding of fact?

### **ANALYSIS**

[6] The Appeal Division's task is more restricted than that of the General Division. When the General Division makes a decision, it is required to consider and weigh the evidence that is before it and to make findings of fact. In doing so, the General Division applies the law to the facts and reaches conclusions on the legal or factual issues raised by the appeal. However, the Appeal Division is only authorized to only consider whether 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).

[7] The 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.

[8] To grant this application for leave and move the appeal process forward to some form of hearing, I must first find that there is a reasonable chance that the Claimant would succeed in establishing that the General Division made one of the above errors. A reasonable chance of success has been equated to an arguable case<sup>1</sup>.

**Issue 1: Is there an arguable case that the General Division based its decision on an erroneous finding of fact?**

[9] The Claimant submitted a leave to appeal application in which she selected, as her ground for appeal, that the “The General Division made an important error regarding the facts in the appeal file”. This is a rough paraphrase of the ground of appeal described in section 58(1)(c) of the DESD Act.

[10] The Claimant did not otherwise elaborate on her reason for appealing the General Division decision, so the Tribunal wrote to her on September 5, 2019. In the letter, the Tribunal explained the grounds of appeal available under section 58(1) of the DESD Act and asked her to state her reasons for appealing the General Division decision. In response to this letter, the Claimant called the Tribunal on September 17, 2019. A Tribunal officer told the Claimant that the Tribunal expected the Claimant to state her reasons for appealing and that her reasons should

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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.

be related to the grounds of appeal. The Claimant did not submit any additional reason or explanation for her appeal or contact the Tribunal again. However, as a result of some changes in the Tribunal's internal practices, the Tribunal wrote the Claimant on October 11, 2017, to inform her that it would consider her application for Leave to Appeal to be complete.

[11] As a result, I remain uncertain as to what findings of fact are of particular concern to the Claimant or what evidence she may believe the General Division ignored or misunderstood. However, because the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal,<sup>2</sup> I still reviewed the record before the General Division for some error.

[12] The principal findings in the General Division decision were that the severance and vacation pay were earnings and that the earnings had been properly allocated. It is apparent from what the Claimant said in her Notice of Appeal to the General Division, and in the written answers she submitted to the General Division, that the Claimant did not dispute that the amounts allocated were earnings or that the Commission had allocated them properly. As a result, it would be difficult for the Claimant to now suggest that the General Division ignored or misunderstood the evidence that would have been relevant to these findings. In my own review, I have not discovered any evidence that was ignored or misunderstood in such a way as to affect the General Division's findings on earnings and allocation.

[13] It is also apparent from the various materials submitted by the Claimant that the Claimant's position before the General Division was that she should not have to repay the overpayment. She took this position because she believes the overpayment was the result of the Commission's delay in allocating the vacation pay and severance payments she received on separation from her employment.

[14] Therefore, I presume that the Claimant is concerned that the General Division ignored or misunderstood some of the evidence that she relied on to argue that the Commission did not act promptly to allocate her severance. Unfortunately, the manner in which the Commission managed her claim or the time it took to allocate her separation amounts is not relevant to whether she owes a debt to the Crown that she must repay in accordance with section 44 and 45

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

of the *Employment Insurance Act* (EI Act). The fact that the Commission would not have overpaid her if it had acted more promptly does not mean that the Claimant has not been overpaid. The law does not excuse her debt.

[15] There can be no arguable case that the General Division ignored or misunderstood any evidence whose purpose was to establish the Commission's responsibility for having overpaid the Claimant in the first place. Such evidence would not be relevant to the question of whether the Claimant must repay the overpayment. Therefore, there is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act.

[16] I note that the General Division stated that it does not have the authority to review the Commission's refusal to write off her overpayment. This is correct at law. The General Division's jurisdiction would have been limited to considering the issues identified in the decision that was under appeal. If the Commission refused to write off her overpayment in some other decision, section 112.1 of the EI Act would not permit the Commission to reconsider that refusal. According to section 113 of the EI Act, only reconsideration decisions may be appealed to the General Division. Therefore, there would have been no way for the Claimant to appeal a write-off decision to the General Division.

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

## CONCLUSION

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

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVES:	E. C., Self-represented
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