



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. G. v Canada Employment Insurance Commission*, 2019 SST 1327

Tribunal File Number: AD-19-770

BETWEEN:

D. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 6, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, D. G. (Claimant), collected employment insurance parental benefits. While doing so, he worked two shifts at his place of employment and reported his wages to the Canada Employment Insurance Commission (Commission), which caused an overpayment. The Claimant argued that because a Service Canada agent told him that he would be entitled to a portion of his weekly benefits, he is not accountable for the misinformation the agent gave him. The Commission maintained its decision to deduct the Claimant's wages from his parental benefits.

[3] The General Division found that the wages the Claimant received from his employer were earnings pursuant to section 35(2) of the *Employment Insurance Regulations* (EI Regulations) and that the earnings were paid to the Claimant for services performed under his employment contract. As such, they had to be allocated to the period in which the services were performed pursuant to section 36(4) of the EI Regulations.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division.

[5] In support of his application for permission to appeal, the Claimant puts forward that the General Division did not refer to all of his points when rendering its final decision. He submits that the whole process is pathetic and designed to fail the Claimant no matter what. The Claimant puts forward that the General Division decision had nothing to do with his complaint.

[6] The Tribunal sent a letter to the Claimant requesting that he explain in detail why he is appealing the General Division decision. In his reply, the Claimant maintained that the General Division did not refer to all of his points when rendering its final decision.

[7] The Tribunal must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[10] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[13] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice,

jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[14] In support of his application for permission to appeal, the Claimant puts forward that the General Division did not refer to all of his points when rendering its final decision. He submits that the whole process is pathetic and designed to fail the Claimant no matter what. The Claimant puts forward that the whole General Division decision had nothing to do with his complaint.

[15] The General Division found that the Commission correctly deducted the Claimant's earnings from his benefits. It also found that the Commission correctly established the overpayment of \$328.

[16] In light of the Claimant's arguments in support of his application for leave to appeal, the Tribunal carefully reviewed the Claimant's notice of appeal to the General Division. The Claimant submitted that the Commission displayed unprofessional, misleading, unaccountable and non-transparent behavior and practice, in the treatment of his file. He declared that a Commission representative informed him that if he were to return to work for the holiday, he would be entitled to a partial portion of his weekly employment insurance claim due to his return to work and earnings. The Claimant expected the overpayment to be around one hundred dollars. The Claimant made a financial decision based upon the information he had received from the Commission's representative. After reporting his earnings, he surprisingly received an invoice asking him to reimburse the full amount of his weekly benefits.

[17] The Claimant essentially argued before the General Division that he should not be held accountable for following the instructions that were given to him by the Commission's representative.

[18] The Tribunal notes that the General Division did address the Claimant's position in its decision. It found that it was very unfortunate that the Claimant had been

misinformed, leading him to make a damaging decision based on this misinformation. However, it concluded that any advice or interpretation of the law given to the Claimant by the Commission's representative did not create an entitlement to benefits where no entitlement exists under the legislation.

[19] Although the Tribunal is sensitive to the situation of the Claimant, the Federal Court of Appeal has clearly decided that an applicant who receives money, for which he is not entitled to, even following a mistake of the Commission, is not excused from having to repay it.¹

[20] The Claimant vigorously puts forward that he suffered damages because the Commission's representative misinformed him, and that he acted on that information, when he decided to work during the holiday. Unfortunately, for the Claimant, the Tribunal does not have jurisdiction to order compensation for any damages suffered by him, even if it was determined by the Tribunal that the Commission's representative misinformed him. It is an issue that must be debated in another forum.²

[21] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[22] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

¹ *Lanuzo v Canada (Attorney General)*, 2005 CAF 324.

² *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.

[23] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	D. G., Self-represented
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