



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. M. v Canada Employment Insurance Commission*, 2019 SST 1333

Tribunal File Number: AD-19-710

BETWEEN:

D. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 7, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. M. (Claimant), did not correctly report his employment income for two benefit periods. After an investigation, the Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant had knowingly made false or misleading statements. For the benefit period starting on December 18, 2016, the Commission determined that the Claimant had knowingly made six false statements and imposed a \$1,535 penalty on him on reconsideration of the file. For the benefit period starting on December 24, 2017, the Commission determined that the Claimant had knowingly made 13 false statements and imposed a \$1,422 penalty on him.

[3] The General Division found that the penalties were justified because the Claimant knew that he had worked during the weeks referred to in the statements he filled out. However, given the extenuating circumstances the Claimant raised, it reduced the amount of the penalties.

[4] The Claimant now seeks leave to appeal the General Division decision to the Tribunal. In support of his application for leave to appeal, the Claimant disputes the Commission's overpayment calculation. He argues that the information his former employer provided is inaccurate and that the business went bankrupt.

[5] On October 23, 2019, the Tribunal asked the Claimant in writing to provide his detailed grounds of appeal in support of the application for leave to appeal under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[6] In his response to the Tribunal, the Claimant repeated his position regarding the inaccurate information provided by his former employer. He wants the garnishment of his wages suspended and the sums that have already been garnished reimbursed.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[8] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[10] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal for a General Division decision. These reviewable errors are the following: 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 made in a perverse or capricious manner or without regard for the material before it.

[11] The application for leave to appeal is a preliminary step to a hearing on the merits of the case. 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; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[13] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that could justify setting aside the decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[14] The General Division had to decide whether the penalty the Commission imposed on the Claimant for having knowingly made false or misleading statements under section 38 of the *Employment Insurance Act* (EI Act) was justified.

[15] Parliament's only requirement for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading statement. Therefore, the absence of the intent to defraud is of no relevance.¹

[16] The General Division found that the penalties were justified because the Claimant knew that he had worked during the weeks referred to in the statements he filled out. It determined that, except for one week, the Claimant made his statements soon after the periods in question. The General Division also determined that the Claimant failed to report the amounts he had received rather than allocate them to the wrong weeks. However, given the extenuating circumstances the Claimant raised, the General Division reduced the amount of the penalties.

[17] In support of his application for leave to appeal, the Claimant disputes the validity of the information his former employer provided. As correctly pointed out by the General Division, the Claimant acknowledged on two previous occasions the validity of the information from the Commission regarding the overpayment, except for the week of April 16, 2017.²

[18] The Tribunal notes that the General Division correctly stated the applicable legal test regarding the penalty. It applied that test to the facts given by the Claimant and investigated whether, after considering all the circumstances, the Claimant had knowingly made false or misleading statements under section 38 of the EI Act.

[19] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issue of law, fact, or jurisdiction that could justify setting aside the decision under review.

¹ *Canada (Attorney General) v Bellil*, 2017 FCA 104.

² GD3-57, GD3-62.

[20] Regarding the request to suspend the garnishment of his wages and reimburse the sums that have already been garnished, the Claimant must apply to the appropriate body, namely the Canada Revenue Agency.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	D. M., self-represented
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