



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. A. v Canada Employment Insurance Commission*, 2019 SST 1347

Tribunal File Number: AD-19-780

BETWEEN:

K. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: November 15, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. A. (Claimant), left her employment in January 2019. She initially received \$2,115.38 in severance, \$177.69 in management compensation, and \$528.85 as vacation pay, for a total of \$2821.92. A few months later and after some negotiation, the Claimant received additional severance in the amount of \$4230.77. The Respondent, the Canada Employment Insurance Commission (Commission), found that all of these amounts were payments on account of the Claimant's separation from employment. It allocated them to weeks of benefits beginning with the week of separation. As a result, the Commission determined that the Claimant had been overpaid \$1397.00 in benefits and it issued a notice of debt.

[3] The Claimant received a separate pension payout amount, which she had not expected until after she retired, and she reported this payment to the Commission. The Commission treated the pension payout as earnings but prorated the payment as though it had been earned in instalments to the date of the Claimant's presumed retirement at age 65. According to a decision letter of July 16, 2019, the Commission allocated these notional payments at \$10.75 per week from January 27, 2019, to the end of the claim.¹ After allocating, the Commission calculated that the Claimant had been overpaid in the amount of \$17.00.² The Claimant repaid the Commission this \$17.00.

[4] The Claimant is appealing because she believes the General Division misunderstood her evidence that she had paid back the \$17.00 overpayment and that it should have been deducted from the \$1397.00 overpayment.

¹ GD2-14

² GD2-15

[5] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division ignored or misunderstood the evidence when it found that it could not deduct the \$17.00 overpayment from the \$1397.00 overpayment that was before it.

ISSUE

[6] Is there an arguable case that the General Division based its decision on a misunderstanding of the nature of the \$17.00 payment or its repayment to the Commission?

ANALYSIS

General Principles

[7] The Appeal Division's task is more restricted than that of the General Division. The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. The Appeal Division may intervene in a decision of the General Division, but 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 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 case³.

Issue: Is there an arguable case that the General Division based its decision on a misunderstanding of the nature of the \$17.00 payment or its repayment to the Commission.

[10] The General Division understood that the Claimant had been asked to make a \$17.00 overpayment in connection with the pension payment. However, it found that the \$17.00 overpayment was a separate matter from the earnings and allocation decision that was on appeal.

[11] The Commission calculated an overpayment of \$1397.00 after allocating a total of \$7052.52, which was made up of management compensation, vacation pay and two separate payments for severance. The General Division determined that the overpayment was correct.

[12] The Claimant has not suggested in this appeal that the General Division made any error in finding this total amount to have been earnings or that the General Division made a mistake in finding that these earnings should be allocated based on the Claimant's average weekly earnings of \$1882.09. The Claimant did not maintain a previous argument that only net earnings should be allocated, and no longer disputes the manner of allocation within her waiting period.

[13] The General Division had jurisdiction to consider only the appeal of the reconsideration decision of August 13, 2019. The Claimant did not raise the \$17.00 overpayment as an issue when she asked for a reconsideration, and her reconsideration request identified only the decision of August 13, 2019. She did not ask for a reconsideration of the July 16, 2019, decision (pension overpayment) and she even told the Commission explicitly that she did not wish to challenge the overpayment related to the pension payment.⁴

[14] The Claimant contests the General Division's decision because it did not offset the \$17.00 overpayment from one notice of debt against the \$1397.00 overpayment arising from a

³ *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259

⁴ GD3-27

separate notice of debt.⁵ However, she has not pointed to any facts that the Claimant missed or misunderstood that could have affected the General Division's finding that it could not do so.

[15] There is no arguable case that the General Division ignored or misunderstood the evidence when it found that the \$17.00 arose from the allocation of the Claimant's pension payment, and not from the other earnings. Similarly, there is no arguable case that the General Division did not properly consider the evidence when it found that the pension payment was a separate amount, not included in the \$7052.69 in earnings that were allocated. There is no arguable case that the General Division ignored or misunderstood the evidence when it found that the overpayment resulting from the allocation of \$7052.69 was \$1397.00. There is also no arguable case that any of these findings might be considered perverse or capricious.

[16] In other words, there is no arguable case that the General Division made an error under section 58(1)(c) of the DESD Act.

[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:	K. A., Self-represented
------------------	-------------------------

⁵ *Supra*, note 2