Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *J. B. v Canada Employment Insurance Commission*, 2019 SST 1375

Tribunal File Number: AD-19-803

BETWEEN:

J. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 25, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. B. (Claimant), applied for benefits on December 20, 2017, and April 25, 2018. On June 14, 2019, the Canada Employment Insurance Commission (Commission) informed the Claimant that it had allocated the earnings he had received from his employer between January 7, 2018, and June 10, 2018. The Commission also imposed a penalty and issued a notice of a very serious violation.

[3] The Claimant did not deny that he had received the amounts the Commission allocated to his benefit period, but he argued that he had been misinformed by an agent of the Commission who told him not to report the missed pay. The Commission reconsidered its decision and reduced the amount of the penalty and cancelled the notice of violation that it had issued. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the amounts the Claimant received from his employer constituted earning that had to be allocated under section 36 of the *Employment Insurance Regulations*. It also found that the Claimant had knowingly made a false or misleading statement because he knew that he had worked during his benefit period.

[5] The Claimant is now seeking leave to appeal the General Division decision. The Claimant argues that the General Division failed to observe a principle of natural justice. He claims that he did not receive the notice of hearing in the mail and therefore was unable to attend. He also repeats the grounds of appeal he presented to the General Division.

[6] 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.

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

ISSUE

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

ANALYSIS

[9] 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; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[10] 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; he must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal raised by the Claimant has a reasonable chance of success.

[12] 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 may lead to the setting aside of the General Division decision under review.

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

Breach of natural justice

[13] In support of his application for leave to appeal, the Claimant argues that he did not receive the notice of hearing in the mail. He argues that his rights were infringed because he was not properly informed of the General Division hearing.

[14] The Tribunal notes that, in his application to the General Division, the Claimant authorized the Tribunal to communicate with him by email using the email address he provided. The notice of hearing was in fact sent to that email address on October 31, 2019. The hearing took place a week later on November 7, 2019. Therefore, the General Division did not fail to observe a principle of natural justice.

Allocation of earnings

[15] Concerning the allocation of earnings, the Claimant does not dispute the amounts reported by the employer between January 7, 2018, and June 10, 2018.

[16] The General Division found that the Commission had correctly allocated the amounts the Claimant received as wages to the weeks in which they were earned.

[17] The Claimant argues that an agent of the Commission told him not to report his income because the employer had not paid him yet. However, that has no impact on the General Division's finding that the Commission had to allocate the amounts the Claimant received as wages to the weeks in which they were earned.

[18] Furthermore, the Federal Court of Appeal has consistently demonstrated that a claimant who receives money to which they are not entitled is not excused from having to repay it, even if the Commission has made a mistake.[1]

Imposition of penalties

[19] The only requirement of Parliament 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.[2]

[20] The General Division found that the penalty was warranted because the Claimant knew that he had performed paid work during the weeks covered by the reports he completed, even if his employer had not paid him yet.

[21] The Claimant maintains that the Commission told him not to report anything because his employer had not paid him. However, the Claimant chose to answer no to the simple question starting with [translation] "have you worked" despite the fact that he was employed and the warning about penalties that the system showed him each time he filed a report. Furthermore, the Commission had told him previously to report his paid work when he worked and not when he was paid.[3]

[22] The Tribunal notes that the General Division stated the relevant legal test correctly. It applied that test to the facts the Claimant raised, and it considered whether, having regard to all the circumstances, the Claimant had knowingly made false or misleading statements under section 38 of the *Employment Insurance Act*.

[23] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised an issue that could lead to the setting aside of the decision under review.

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[1] *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.
[2] *Canada (Attorney General) v Bellil*, 2017 FCA 104.
[3] GD3-124.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. B., self-represented