



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. H. v Canada Employment Insurance Commission*, 2019 SST 1384

Tribunal File Number: AD-19-811

BETWEEN:

**S. H.**

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: November 28, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, S. H. (Claimant), collected Employment Insurance benefits while working for two different employers. The Respondent, the Canada Employment Insurance Commission (Commission), discovered that the Claimant had misreported her wages and termination pay. She had mistakenly related these earnings to the wrong pay periods in her claim reports. After reallocating the Claimant's earnings, the Commission determined that the Claimant had been overpaid. It told the Claimant that she must repay the overpayment.

[3] The Claimant did not understand the overpayment and asked the Commission to reconsider. The Claimant did not change its decisions so the Claimant appealed to the General Division. Her appeal was dismissed and she now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. She has not identified any evidence that was ignored or misunderstood by the General Division, and I have not discovered an arguable case that the General Division made an important error of fact.

### WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is a case that the Claimant could argue and possibly win.<sup>1</sup>

[6] "Grounds of appeal" means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:<sup>2</sup>

1. The General Division hearing process was not fair in some way.

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<sup>1</sup> This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.

<sup>2</sup> This is a plain language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act*.

2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

## **ISSUE**

[7] Did the General Division base its decision on a misunderstanding of the Claimant's earnings?

## **ANALYSIS**

### **Evidence of the Claimant's earnings**

[8] The Claimant has not pointed to any error in the General Division's understanding of the Claimant's earnings. At the General Division, the Claimant confirmed that most of the employer's earnings figures were correct but she said that she did not know if they were all correct. She now argues that the General Division did not have all the facts when it made its decision.

[9] At the General Division, the Claimant expressed a concern that she did not have the paystubs she would require to verify all the earnings figures provided by the employer. However, she was not certain that the employer's figures were wrong, and she produced no evidence to challenge them.

[10] The Claimant has an obligation to bring to the General Division any evidence she believes she requires to support her appeal. The General Division is not required to seek out evidence that is not found in the Commission file and that the parties have not brought to the Tribunal.<sup>3</sup> In the absence of contrary evidence, the General Division relied on the employer's evidence of the wages and severance amounts paid to the Claimant, and of the periods in which those amounts were actually earned. The General Division was entitled to make a decision based

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<sup>3</sup> See *T. W. v. Minister of Employment and Social Development*, 2018 SST 58

on the evidence that was before it. I do not have the power to re-evaluate the evidence that was before the General Division, or to reweigh it to reach a different result.<sup>4</sup>

[11] I have not discovered an arguable case that the General Division misunderstood or ignored any of the evidence.

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

**CONCLUSION**

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

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVES:	S. H., Self-represented
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<sup>4</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 130; *Griffin v. Canada (Attorney General)*, 2016 FC 874.