



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation : *G. C. v Canada Employment Insurance Commission*, 2019 SST 1409

Tribunal File Number: AD-19-246

BETWEEN:

G. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 17, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, G. C. (Claimant), worked as a labourer at a golf club for about 15 years. He submits that, following a change of administration, he experienced psychological harassment at work by his new foreperson. Like every year, the Claimant did not work during winter because of the seasonal nature of his job. He eventually learned that he would not be called back to work for the beginning of the next season.

[3] The Claimant filed complaints against his employer with the Commission des normes, de l'équité, de la santé et de la sécurité au travail [provincial labour standards board]. An agreement was reached between the parties, and the employer had to pay various types of sums to the Claimant. The Canada Employment Insurance Commission (Commission) determined that \$5,000 paid to the Claimant as separation pay constituted earnings and had to be allocated retroactively starting the week following the Claimant's last week of work.

[4] The General Division determined that the \$5,000 that the Claimant received from his employer constituted earnings that had to be allocated under section 36(9) of the *Employment Insurance Regulations* (EI Regulations).

[5] The Claimant now seeks leave to appeal the General Division decision. He submits that he did not have his complete file at the General Division hearing. He would like to exercise his rights.

[6] The Tribunal must determine 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 had 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; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must establish that there is an arguable case that there is a reviewable error based on which the appeal has a reasonable chance of success.

[11] 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.

[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 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?

[13] The Claimant is seeking leave to appeal the General Division decision. He submits that he did not have his complete file at the General Division hearing. He would like to exercise his rights.

[14] The General Division had to decide whether the \$5,000 the Claimant received constituted earnings that had to be allocated under sections 35 and 36 of the EI Regulations.

[15] The Tribunal finds that the agreement reached between the parties clearly states that the Claimant received the \$5,000 as notice of termination of employment.

[16] The General Division found from the evidence that the \$5,000 the Claimant received as separation pay had to be allocated to a number of weeks that began with the Claimant's week of separation. Since the Claimant stopped working completely on November 20, 2017, the General Division correctly allocated that amount to November 19, 2017, at the rate of the Claimant's weekly earnings and in accordance with section 36(9) of the EI Regulations.

[17] After reviewing the appeal file, the General Division 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.

CONCLUSION

[18] The Tribunal refuses leave to appeal to the Appeal Division

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	G. C., self-represented
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