



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. N. v Canada Employment Insurance Commission*, 2019 SST 1394

Tribunal File Number: AD-19-813

BETWEEN:

R. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 10, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. N. (Claimant), was laid off from his employment due to a shortage of work on March 1, 2018, and got a combined \$111,788.07, from his former employer when his employment ended. The Claimant applied for employment insurance benefits on August 22, 2019. When reviewing his application for benefits, the Commission became aware of the money he had received when he lost his employment in March 2018.

[3] The Commission decided that the Claimant being laid-off from his employment was the reason why the earnings were paid. The earnings were therefore allocated from March 2, 2018, until the week of April 12, 2020. The Claimant requested a reconsideration of this decision, and the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division of the Tribunal.

[4] The General Division found that the amount the Claimant received from the employer where earnings and that the Commission correctly allocated the earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations* (EI Regulations).

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division.

[6] In support of his application for permission to appeal, the Claimant puts forward that he did not receive the notice of hearing by email. He would like a chance to explain his story to the Tribunal.

[7] A letter was sent to the Claimant asking that he explain in detail her grounds of appeal on the issue of allocation of earnings. The Claimant puts forward that it is unfair

that the Canada Revenue Agency does not allow him to allocate his earnings but that the Commission is allowed to do it. He submits that he had a long dispute with his employer who was attempting not to pay him his severance pay. Now that he has received a severance pay, he can no longer sue his employer according to his lawyer.

[8] The Tribunal must decide whether arguably, there is some reviewable error of the General Division upon which the appeal might succeed.

[9] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[10] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

ANALYSIS

[11] 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; 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 had made in a perverse or capricious manner or without regard for the material before it.

[12] 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 but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[13] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[14] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[15] In support of his application for permission to appeal, the Claimant puts forward that he did not receive the notice of hearing by email. He would like a chance to explain his story to the Tribunal.

[16] The General Division did proceed with the hearing in the Claimant's absence. It noted that the Claimant had allowed the General Division to communicate with him by email. On October 31, 2019, the Notice of Hearing was sent to the email the Claimant provided. The General Division found that the Claimant received notice of the hearing because there was no evidence the email was undeliverable or was returned. In view of the above, the Tribunal cannot find a breach of natural justice.

[17] Notwithstanding, a letter was sent to the Claimant asking that he explain in detail his grounds of appeal on the issue of allocation of earnings.

[18] The Claimant puts forward that it is unfair that the *Canada Revenue Agency* does not allow him to allocate his earnings but that the Commission is allowed to do it. He submits that he had a long dispute with his employer who was attempting not to pay him his severance pay. Now that he has received a severance pay, he can no longer sue his employer according to his lawyer.

[19] The Federal Court of Appeal has clearly established that amounts paid by reason of separation from an employment constitute earnings within the meaning of section 35

of the EI Regulations and must be allocated in accordance with subsection 36(9) of the EI Regulations.

[20] Therefore, the General Division did not err when it concluded that the Claimant had earnings pursuant to section 35(2) of the EI Regulations and that these earnings were correctly allocated pursuant to section 36(9) of the EI Regulations because the earnings were paid by reason of a separation from an employment.

[21] As noted by the General Division, the allocation is done from the week of when the layoff happened, and is allocated weekly from that point on, until it is exhausted. The earnings were therefore correctly allocated from March 2, 2018, until the week of April 12, 2020.

[22] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[23] For the above mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. N., Self-represented
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