



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. B. v Canada Employment Insurance Commission*, 2019 SST 1479

Tribunal File Number: AD-18-894

BETWEEN:

L. B.

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, L. B. (Claimant), received Employment Insurance regular benefits from January 11, 2015, to November 14, 2015. The information received from the Canada Border Services Agency showed that the Claimant was outside Canada from July 2, 2015, to June 27, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant had knowingly made false statements.

[3] The Commission considered the Claimant to have been outside Canada during the benefit period, which created an overpayment of \$9,537. The Commission also determined that the Claimant had made 11 false or misleading statements, and it therefore imposed a penalty of \$2,515. The Commission also issued a notice of violation.

[4] The General Division found that the imposition of penalties was justified because the Claimant knew that she was outside Canada when she completed her reports while taking care of her sick mother. The General Division also found that the Commission had exercised its discretion judicially when it imposed penalties on the Claimant and issued a notice of violation.

[5] The Claimant now seeks leave to appeal the General Division decision. She argues that she received the documents at the deadline for the General Division hearing and had little time to prepare her defence.

[6] On November 7, 2019, the Tribunal asked the Claimant in writing to provide her detailed grounds of appeal in support of the application for leave to appeal under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). The Claimant asked for an extension of time until December 15, 2019, to produce

her grounds of appeal. The Claimant did not respond to the Tribunal's request within the time granted.

[7] 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.

[8] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

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

ANALYSIS

[10] Section 58(1) of the 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.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal may succeed.

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

[13] 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?

[14] The Tribunal notes that the notice for the General Division hearing was sent to the Claimant on October 16, 2018, and that it was delivered to the Claimant on October 19, 2018. The hearing was scheduled for November 21, 2018. The Claimant therefore had enough time to prepare for her hearing. Furthermore, she did not ask for an adjournment at the General Division. The Tribunal is of the view that there was no breach of natural justice.

[15] The General Division had to decide whether the Commission was justified in imposing a penalty on the Claimant for having knowingly made false or misleading statements under section 38 of the *Employment Insurance Act* (EI Act).

[16] Parliament's only requirement for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading statement. The absence of the intent to defraud is therefore of no relevance.¹

[17] The General Division found that the imposition of penalties was justified because the Claimant was outside Canada and must have known that she was required to report her absence from Canada. She was completing her reports outside Canada while taking care of her sick mother. In addition, the question was asked clearly and simply each time she completed her reports.

[18] The Tribunal notes that the General Division correctly stated the applicable legal test. It applied that test to the facts raised by the Claimant and asked whether, having regard to all the circumstances, the Claimant had knowingly made false or misleading statements under section 38 of the EI Act.

¹ *Canada (Attorney General) v Bellil*, 2017 FCA 104.

[19] The Tribunal notes that, despite the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[20] Concerning the secondary request for a write-off, the General Division correctly explained to the Claimant that it had no jurisdiction over such an issue. It is up to the Federal Court to decide that issue after the Commission decides on the write-off.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division

REPRESENTATIVE:	L. B., self-represented
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