



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. M. v Canada Employment Insurance Commission*, 2019 SST 1414

Tribunal File Number: AD-19-848

BETWEEN:

**G. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Decision on Request for Extension of Time and Pierre Lafontaine  
Leave to Appeal by:

Date of Decision: December 18, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal grants the request for an extension of time to file the application for leave to appeal but refuses leave to appeal to the Appeal Division.

### **OVERVIEW**

[2] An investigation revealed that, during three benefit periods, the Applicant G. M. (Claimant) became employed and earned wages. The earnings provided by the employer, when matched with the Claimant's declarations, revealed that the Claimant did not declare any earnings while receiving benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), notified the Claimant that the money he received from his employer as wages constituted earnings and allocated them to the weeks worked. Furthermore, the Commission imposed penalties. For the period of May 24, 2015 to August 23, 2015, \$3598.00, and for the period of March 27, 2016 to June 19, 2016, \$3304, because the Claimant made misrepresentations by knowingly providing false or misleading information. They also issued a violation. There was no penalty or violation issued for the period of March 16, 2014 to August 17, 2014.

[4] The Claimant argued that his ex-spouse, without his consent or knowledge, fraudulently gained access to his access number for 2014, 2015 and 2016. She then directed funds from the benefits into her account, to which he had no access. He has now approached Niagara Regional Police to conduct an investigation. Upon reconsideration, the Commission maintained its initial decision.

[5] The Claimant appealed the Commission decision to the General Division. The General Division concluded that the Claimant received money from his employer and this money was paid to him as wages. Having found that the money was earnings, it found that the Commission had correctly allocated these earnings to weeks worked according to subsection 36(4) of the *Employment Insurance Regulations*. The General Division also

concluded that the Claimant had knowingly made false statements or representations to the Commission and that the Commission had exercised its discretion in a judicial matter when it imposed a Notice of Violation.

[6] The Claimant what granted leave to appeal of the General Division's decision. The Claimant submitted that the General Division had failed to observe a principal of natural justice since he did not have the opportunity to fully present his case. He also put forward that the General Division erred in fact and in law when it concluded that he had knowingly made false statements or representations to the Commission. That appeal is currently pending before the Appeal Division.

[7] During his pending appeal to the Appeal Division, the Claimant filed an application to rescind or amend the decision of the General Division pursuant to section 66 of the *Department of Employment and Social Development Act* (DESD Act) in order to introduce evidence. The General Division dismissed the application. The Claimant is now requesting leave to appeal to the Appeal Division on the dismissal of his application to rescind or amend the General Division decision.

[8] The Tribunal must decide whether it will allow the late application for leave to appeal and whether there is some reviewable error of the General Division upon which the appeal might succeed.

[9] The Tribunal grants the request for an extension of time to file the application for leave to appeal but refuses leave to appeal to the Appeal Division.

## **ISSUES**

[10] Did the Claimant file his application for leave to appeal on time?

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

## **ANALYSIS**

[12] 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; 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.

[13] 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.

[14] 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.

[15] 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.

### **Issue no 1: Did the Claimant file his application for leave to appeal on time?**

[16] The Tribunal finds that the Claimant did not file his appeal within the prescribed time.

[17] The Claimant was convinced that his application for rescind or amend the General Division decision formed part of his pending appeal before the Appeal Division. He was not aware that he also had to appeal the General Division decision on his application to rescind or amend pursuant to section 66 of the DESD Act.

[18] The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Claimant's request for an extension of time to file his application for leave to appeal without prejudice to the Respondent.<sup>1</sup>

**Issue no 2: Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[19] The Claimant argues that the General Division erred in law in its interpretation of section 66 of the DESD Act. He argues that the General Division failed to rescind or amend its original decision, based on new objective evidence submitted.

[20] Section 66 of the DESD Act reads as follows:

Amendment of decision

66 (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if

a) in the case of a decision relating to the *Employment Insurance Act*, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact;

[21] In support of his application to rescind or amend the General Division's decision, the Claimant filed a letter from the X Bank stating that on August 17, 2012, he opened a joint checking account with his wife #X. His single ownership account #X was closed on Aug 20, 2012. The Claimant argues that this bank letter supports his position that there was third party fraud since the employment insurance benefits were transferred to another account that he claims belongs exclusively to his ex-wife.

[22] The Tribunal notes that the Claimant had already introduced banking evidence before the General Division in support of his position that the benefits were transferred from the joint account #X to another account that he claims belonged exclusively to his

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<sup>1</sup> X (Re), 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

ex-wife.<sup>2</sup> Therefore, this evidence was already submitted to the General Division for consideration before it rendered its original decision on July 22, 2018.

[23] The Claimant did not raise before the General Division any relevant new facts that either happened after the decision had been rendered or had happened prior to the decision but could not have been discovered by him acting diligently. He also has not demonstrated that the General Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact.

[24] After reviewing the appeal docket, the General Division's rescind or amend decision and the Claimant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[25] The Tribunal grants the request for an extension of time to file the application for leave to appeal but refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	Alexander Rawana, for the Applicant
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<sup>2</sup> GD6-8 to GD6-26.