



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. K. v Canada Employment Insurance Commission*, 2020 SST 11

Tribunal File Number: AD-19-645

BETWEEN:

L. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: January 9, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, L. K. (Claimant), collected Employment Insurance benefits at the same time that she worked part-time. The Claimant reported on her weekly claim reports that she was working, and also reported her income from her employment. However, the Respondent, the Canada Employment Insurance Commission (Commission), determined that she had under-reported her actual income in the period that started with the week that began June 19, 2016, and ended with the week that began October 23, 2016. The Commission decided that the Claimant had been overpaid benefits and would have to repay the benefits to which she was not entitled. It also found that she knew she was under-reporting her income when she declared the amount of her income on each report. As a result, the Commission also assessed a penalty against her and imposed a notice of violation.

[3] After the Claimant requested a reconsideration, the Commission accepted that the Claimant did not mean to misrepresent her income and it agreed to remove the penalty and the notice of violation. However, it did not change its decision on the overpayment. The Claimant appealed to the General Division of the Social Security Tribunal but the General Division dismissed her appeal (decision number GE-19-2125). She has now appealed to the Appeal Division.

[4] The appeal is dismissed. The General Division did not ignore or misunderstand relevant evidence.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] To allow the appeal, I must find that the General Division made one of the types of errors described in the grounds of appeal. The “grounds of appeal” are outlined below:¹

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

ISSUES

[6] Did the General Division ignore or misunderstand the Claimant’s evidence that she sometimes performed work in different weeks than the weeks in which she received the pay for that work?

ANALYSIS

Interpretation of the Spreadsheet evidence

[7] The General Division did not accept that the spreadsheet evidence² supported that the Claimant’s earnings between June 19, 2016, and October 29, 2016, were for work that she performed in an earlier period. The General Division said that the spreadsheet provided no specific weekly course or payment dates. The General Division could not relate the undated entries of late or missing hours to her allocation weeks.

[8] Leave to appeal was granted on the basis that the General Division may have failed to consider the significance of the spreadsheet evidence. The spreadsheet evidence was complex and was not self-explanatory. The Claimant provided the spreadsheet as post-hearing evidence, which means that she did not have an opportunity to explain it. In granting leave, it was my view that there was an argument that the spreadsheet evidence could possibly relate the Claimant’s

¹ 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 GD-9

hours and pay to specific pay periods. Therefore, it could potentially have assisted to determine whether there the Claimant's pay had been overstated in certain weeks and understated in others. However, the significance of the spreadsheet evidence may have depended on how it was reconciled with other pay information from the employer.³

[9] At her Appeal Division hearing, the Claimant confirmed that \$697.80 was the only amount within the June 19, 2016, and October 29, 2016, timeframe, that she believed had been misallocated. The \$697.80 was for 15 hours described as "Late/Missing Academic Hours Pay" on a line item associated with "Payroll No. 22" in 2016.⁴ The Claimant initially argued that a number of "PT Vacation Pay" amounts had also been misallocated but she could only point to PT Vacation Pay amounts that were paid in 2017 and which related back to 2016. Those payments were not relevant to any misallocation of earnings in the period from June 19, 2016, to October 29, 2016. This was the only issue before the Appeal Division in this appeal.

[10] The Claimant was offered the opportunity to interpret the spreadsheet evidence in more detail but she could not assist. She indicated that the spreadsheet was prepared by her former employer to help her with her appeal.

[11] The Claimant could not confirm to the Appeal Division that the spreadsheet's "Payroll No." was meant to actually identify particular pay periods. She also conceded that there was no documentation before the General Division that could isolate the specific week in which the employer paid her for the late/missing hours. She stated her belief that late/missing pay was the reason for her overpayment in the week of October 9, 2016.⁵ The difference between what is described as her actual earning \$1313.00 and her reported earnings of \$640.00 calculates to \$673.00. The Claimant said she believes the late/missing pay was allocated in October 9, 2016, because this amount (\$673.00) matches (or approximately matches) the \$697.00 late/missing pay from the spreadsheet.

[12] However, the Claimant candidly acknowledged to the Appeal Division that nothing in the spreadsheet, or in the other information given to the General Division including the payroll

³ payroll information from the employer used for allocation, GD3-91; Record of Employment information GD3-12

⁴ GD9-7

⁵ GD3-95

information and the ROE, showed when the late/missing hours were actually earned. She said that the late/missing hours pay could have been for proctoring exams. She also said that it could have related to back pay from the previous semester, or even from picking up the instruction of an evening course. The Claimant said she has no way of knowing which it was.

[13] I appreciate that the Claimant still believes that the late/missing pay was misallocated to the week of October 9, 2019. She may be right but she has not shown me how this can be determined from the evidence that was before the General Division. I cannot interfere with the manner in which the General Division assessed the evidence or reweigh the evidence to come to a different conclusion.⁶

[14] I find that the General Division did not make an error by ignoring or misunderstanding the evidence, or that its decision was inconsistent with the evidence. The General Division did not make an important error of fact.⁷

CONCLUSION

[15] The appeal is dismissed.

Stephen Bergen
Member, Appeal Division

HEARD ON:	December 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. K., Appellant

⁶ *Tracey v. Canada (AG)*, 2015 FC 1300; *Griffin v Canada (Attorney General)*, 2016 FC 874; *Hideq v. Canada (Attorney General)*, 2017 FC 439

⁷ Meaning an “erroneous finding of fact that was made in a perverse or capricious manner or without regard for the material before it”: Section 58(1)(c) of the *Department of Employment and Social Development Act*.