



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. B. v Canada Employment Insurance Commission*, 2020 SST 56

Tribunal File Number: AD-20-57

BETWEEN:

**L. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 30, 2020

## DECISION AND REASONS

### DECISION

[1] The Tribunal refuses leave to appeal the General Division's January 16, 2020, decision dismissing the application to rescind or amend.

### OVERVIEW

[2] The Applicant, L. B. (Claimant), established an Employment Insurance benefit period. She completed her reports every two weeks by Internet and received benefits. Following an investigation, the Employment Insurance Commission (Commission) found that the Claimant had worked for the employer X and received a salary during the weeks of August 17, 2014; August 24, 2014; August 31, 2014; and September 7, 2014, but that she had not declared it. The Commission determined that the salary the Claimant had received constituted earnings, and it allocated it to the weeks worked. The Commission also decided to impose a non-monetary penalty on the Claimant for having knowingly made false or misleading representations. The Claimant requested a reconsideration, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the sums the Claimant received from her employer X constituted earnings that had to be allocated under section 36(4) of the *Employment Insurance Regulations*.

[4] The Claimant was granted leave to appeal the General Division's initial August 14, 2019, decision. She argues that the General Division made its decision without regard for the material before it.

[5] In the meantime, the Claimant filed an application to rescind or amend the General Division's initial decision. The General Division dismissed the Claimant's application.

[6] The Claimant seeks leave to appeal the General Division's decision dismissing her application to rescind or amend.

[7] 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.

[8] The Tribunal refuses leave to appeal the General Division's January 16, 2020, decision dismissing the application to rescind or amend.

### **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 *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.

[11] 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might 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 success based on a reviewable error the General Division may have made?**

[14] In support of her application for leave to appeal, the Claimant argues that the General Division showed a lack of transparency and fairness towards her. She submits that the General Division should not have allowed the member who made the initial decision that was not in her favour to decide her application to rescind or amend.

[15] In her application to rescind or amend the General Division’s decision, the Claimant indicates that she obtained information that she did not have at the time of the hearing that led to the August 14, 2019, decision. She indicates that she filed a formal complaint with the Office of the Privacy Commissioner of Canada in August 2019 and that this complaint is being processed. She attached a few Tribunal decisions to her application to rescind or amend. These decisions were not in the appeal file when the General Division gave its decision.

[16] The General Division found no reason to rescind or amend the initial decision under section 66 of the DESD Act.

[17] Section 66 of the DESD Act states the following:

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....

[18] The test for determining whether “new facts” were submitted at the General Division stage within the meaning of this provision has long been established. “[N]ew facts,” for the purpose of the reconsideration of the General Division decision, are facts that happened either after the decision was made or before, but that could not have been

discovered by a claimant acting diligently, and, in both cases, the facts alleged must have been decisive of the issue put to the General Division.

[19] It is true that the complaint filed with the Office of the Privacy Commissioner of Canada in August 2019 occurred after the General Division's decision. However, this alleged fact has no impact on the General Division's decision about the allocation of earnings. Regarding the Tribunal case law the Claimant filed, it does not constitute a new fact within the meaning of section 66 of the DESD Act.

[20] Furthermore, as the General Division stated, these documents do not provide any new or additional information that would show that the Commission did not allocate the earnings properly. Therefore, the General Division did not make its initial decision without knowledge of an essential fact, and that decision was not based on a related error.

[21] After reviewing the appeal file, the General Divisions' decision on the application to rescind or amend its initial decision, and the Claimant's arguments in support of her application 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 within the grounds of appeal listed above and that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

[22] The Tribunal refuses leave to appeal the General Division's January 16, 2020, decision, dismissing her application to rescind or amend under section 66 of the DESD Act, to the Appeal Division.

[23] The Claimant's appeal of the General Division's initial August 14, 2019, decision will proceed in the file AD-19-572.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	L. B., self-represented
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