



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. S. v Canada Employment Insurance Commission*, 2020 SST 146

Tribunal File Number: AD-20-21

BETWEEN:

**J. S.**

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: Stephen Bergen

Date of Decision: February 18, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal is refused.

### **OVERVIEW**

[2] The Applicant, J. S. (Claimant), was laid off in 2003 as a result of changes to the terms of a collective agreement between the province and its employees. The legislation authorizing those changes was later found to be unconstitutional and the government negotiated a settlement with various unions. This resulted in a payment to the Claimant in 2009. In a decision dated July 9, 2009, the Respondent, the Canada Employment Insurance Commission (Commission), found that payment in the amount of \$11,820.00 to be earnings. It allocated the payment to weeks of benefits in the period from November 2003 to March 2004. The Commission declared an overpayment of \$6,938.00, which became a debt owing by the Claimant.

[3] The Claimant, and many others affected by like determinations, appealed the Commission's decisions under the previous system of administrative appeals. Eventually, the Appeal Division heard these matters as a representative appeal. The Appeal Division allowed that the claimants who were part of the representative appeal could ask the Commission to make a new decision on their claim prior to December 15, 2014.

[4] On November 8, 2014, the Claimant asked the Commission to reconsider a number of decisions which she identified only as decisions from 2010, 2014, 2015, 2016, 2018 and 2019. The Commission accepted her reconsideration request as a request to reconsider the July 9, 2009, decision which originally allocated the Claimant's payment as earnings. However, the Claimant also received a number of letters from both the Commission and from the Canada Revenue Agency over the years. These letters relate to collection of the outstanding debt and the Claimant's request to have the debt written off.

[5] On February 4, 2015, the Commission reconsidered the allocation based on an adjustment to normal weekly earnings. This reduced the overpayment to \$6236.00. The decision was otherwise unchanged.

[6] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal on December 10, 2019. The General Division refused to grant an extension of time so that it could consider her appeal because the appeal was filed more than a year out of time. The Claimant is now seeking leave to appeal to the Appeal Division.

[7] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division made an error of jurisdiction or an error of fact or law.

### **PRELIMINARY MATTERS**

[8] The Claimant had attached a number of decisions to its appeal to the General Division. In her leave to appeal application filed to the Appeal Division, she referred to multiple attempts to have her decision reconsidered. I arranged for a case conference on February 13, 2019, so that the Claimant could identify the error or errors that she believed the General Division had made and confirm what it was that she was appealing. I explained that the General Division decision had refused to grant her an extension of time to appeal the Commission's reconsideration decision.

[9] The Claimant had difficulty pointing to a particular error in the General Division decision. She stated that she disagreed with the Commission's attempts to recover the overpayment and she confirmed that she was disputing the Commission's refusal to write off the debt.

### **WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?**

[10] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is an arguable case. This would be some argument that the Claimant could make and possibly win.<sup>1</sup>

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<sup>1</sup> This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.

[11] “Grounds of appeal” means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:<sup>2</sup>

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**

[12] Is there an arguable case that the General Division failed to exercise its discretion by not considering decisions or issues that were brought before it?

[13] Is there an arguable case that the General Division made an error of fact or law by failing to grant an extension of time?

## **ANALYSIS**

### **Jurisdiction**

[14] Section 113 of the *Employment Insurance Act* (EI Act) states that the only Commission decisions that may be appealed to the General Division are the Commission’s reconsideration decisions. The Claimant may have requested the Commission to reconsider other decisions but I see no indication of any other reconsideration decision in the various letters attached to the Claimant’s submissions to the General Division or in the Commission’s file. The only reconsideration decision I can find is the decision dated February 4, 2015.

[15] Some of the letters that the Claimant sent to the General Division concern her request to write off the debt. On March 9, 2018, the Commission refused her request to have her debt written off. Unfortunately, section 112.1 of the EI Act states that the Commission may not reconsider its write-off decisions, so the Claimant would not have received a reconsideration decision on this, even if she requested a reconsideration. Since only reconsideration decisions are

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<sup>2</sup> 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*.

appealable to the General Division, the General Division could not consider an appeal of the write-off decision.

[16] The Claimant also attached collection letters and other correspondence from the Canada Revenue Agency. The General Division has no jurisdiction to review decisions of the Canada Revenue Agency.

[17] I have considered whether the General Division may have refused jurisdiction over decisions or issues that were properly before it. I find that the reconsideration decision of February 4, 2015, was the only decision that it had jurisdiction to review. There is no arguable case that the General Division failed to exercise its jurisdiction.

**Extension of time**

[18] The Claimant did not dispute any of the facts on which the General Division found that her appeal was filed more than one year after the Commission communicated the decision to her. I have reviewed the file and I cannot find any evidence that the General Division ignored or misunderstood in coming to that conclusion.

[19] Furthermore, the General Division decision is correct at law. Section 52(2) of the *Department of Employment and Social Development Act* does not allow an appeal to be brought more than a year after the decision was communicated to the Claimant. The General Division did not have any discretion to allow an extension of time.

[20] The Claimant has no reasonable chance of success on appeal.

**CONCLUSION**

[21] The application for leave to appeal is refused.

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVES:	R. S., for the Applicant
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