



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. B. v Canada Employment Insurance Commission*, 2020 SST 226

Tribunal File Number: AD-20-118

BETWEEN:

C. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 13, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, C. B. (Claimant), was working for X when he was dismissed. The Claimant said he was dismissed after submitting a medical certificate placing him on a leave from work. He received Employment Insurance regular benefits for the period from May 28, 2017, to September 30, 2017, when he was on sick leave. The Commission created an overpayment of \$2,144 for that period because he had received the maximum 15 weeks of Employment Insurance sickness benefits. The employer also paid him \$1,203.29 in vacation pay. The Commission allocated that amount from the date of dismissal by the employer, which created an overpayment of \$900. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the Claimant could not receive Employment Insurance sickness benefits for the period from April 29, 2018, to May 26, 2018. It also determined that it was appropriate to allocate the \$1,203.29 in vacation pay starting from the week of the lay-off, that is, May 28, 2017. Finally, it determined that it did not have the jurisdiction to make a decision on the request for write-off.

[4] The Claimant now seeks leave to appeal the General Division decision. Initially, he did not file any ground of appeal.

[5] On March 2, 2020, the Tribunal sent a letter to the Claimant asking him for detailed grounds of appeal in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[6] In response to the Tribunal's request, the Claimant submits that the General Division did not understand the numerous changes the Commission had made in his file. He submits that the General Division did not consider the impact of the Commission's

administrative errors in its decision. He argues that the Commission violated his rights and his person with negative comments and abusive and unjustified letters to him.

[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 the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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 his case; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a 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 has a reasonable chance of success.

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

[13] In support of his application for leave to appeal, the Claimant submits that the General Division did not understand the numerous changes the Commission made in his file. He submits that the General Division did not consider the impact of the Commission's administrative errors in its decision. He argues that the Commission violated his rights and his person with its negative comments and abusive and unjustified letters to him.

[14] The uncontested evidence before the General Division shows that the Claimant received 15 weeks of sickness benefits for the period from May 28 to September 30, 2017. He also received Employment Insurance regular benefits during the period from April 29, 2018, to May 26, 2018, because he said he was available for work and capable of working during that period.

[15] The Claimant then sent a medical certificate indicating that he was on sick leave for a period of eight weeks as of April 30, 2018. Because of the medical certificate, the Claimant should not have received Employment Insurance regular benefits for the period from April 29, 2018, to May 26, 2018, but rather sickness benefits.

[16] The General Division determined that the Claimant had already received the maximum weeks of sickness benefits. Therefore, he could not receive Employment Insurance sickness benefits for the period from April 29, 2018, to May 26, 2018. It rightly found that the Commission had to create an overpayment equivalent to four weeks of benefits at \$536/week, for a total of \$2,144.

[17] It is also uncontested that the Claimant received \$1,203.29 in vacation pay after the termination of his employment due to his dismissal.

[18] It is well established that earnings received by a Claimant because of a lay-off or separation from an employment will be allocated to a number of weeks that begins with the week of the lay-off or separation from employment, based on the normal weekly earnings from that employment, without consideration of the period when it was paid or became payable.

[19] It was therefore appropriate to allocate the \$1,203.29 in vacation pay starting from the week of the lay-off, that is, May 28, 2017, even if the employer was late in making the payment.

[20] It is also well established that the General Division does not have the jurisdiction to give a decision on a request for write-off. If the Claimant wants to ask for a write-off of his debt, he must apply directly to the Commission so that a decision can be made on the issue. Only the Federal Court of Canada has the jurisdiction to receive an appeal against that issue after the Commission has made a decision on that issue.

[21] Based on the Claimant's observations and submissions in support of his application for leave to appeal, the Tribunal wants to point out that it does not have the necessary jurisdiction to order the payment of compensation for the inconveniences and damages that he claims to have suffered after the handling of his file by the Commission.

[22] It is a debate for another forum.¹

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	C. B., self-represented
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¹ *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.