



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *DB v Canada Employment Insurance Commission*, 2021 SST 84

Tribunal File Number: AD-21-64

BETWEEN:

D. 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 3, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) made two claims for benefits, on July 1, 2017, and July 3, 2018. Since January 31, 2018, he has been receiving a retiring allowance of \$1,073.53 per month from the Québec Pension Plan (QPP).

[3] On October 29, 2019, the Respondent, the Canada Employment Insurance Commission (Commission), informed the Claimant that he had failed to report \$248 per week in earnings from a QPP pension. The Commission allocated those earnings to the benefit periods as of January 1, 2018.

[4] The General Division determined that the retiring allowance the Appellant received from the Québec Pension Plan had to be allocated to both benefit periods. It found that the monthly pension amount received from the QPP constitutes earnings and that the Commission had correctly allocated those earnings as of January 1, 2018.

[5] The Claimant now seeks leave to appeal the General Division's decision. He submits that the General Division made an error of law.

[6] I have to 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.

[7] I am refusing 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

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

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

- (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.

[10] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the 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.

[11] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal 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?

[12] In support of his application for leave to appeal, the Claimant argues that nothing in the *Employment Insurance Act* or the *Employment Insurance Regulations* clearly indicates that pension income constitutes earnings.

[13] The Claimant acknowledged before the General Division that he receives a retiring allowance of \$1,073.53 per month from the QPP and that he received the first monthly payment on January 31, 2018.

[14] As the General Division noted, moneys payable to a claimant on a periodic basis as a retirement pension under a provincial pension plan constitute earnings under the *Employment Insurance Regulations* (EI Regulations).¹

[15] Moneys paid on a periodic basis like this must be allocated to the period for which they are paid or payable.²

[16] The Federal Court of Appeal has confirmed this interpretation of the EI Regulations by the Tribunal twice.³

[17] As a result, the General Division did not make an error when it found that the pension amount received from the QPP constitutes earnings, and these earnings must be allocated to the benefit periods. The file shows that the Commission properly calculated an amount of \$248 to allocate to each week of benefits mentioned.

[18] Although the outcome is disappointing for the Claimant, who testified before the General Division that he had done as instructed by the Commission, the Tribunal does not have the required jurisdiction to write off an overpayment for the inconvenience he claims he suffered after the Commission looked at his file. That is an issue that must be debated in another forum.⁴

[19] I find that the Claimant has not raised any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

¹ Section 35(1) pension (c) under a provincial pension plan, and section 35(2)(e) of the EI Regulations.

² Section 36(14) of the EI Regulations.

³ *Wilson v Canada (Attorney General)*, 2019 FCA 49; *Mosley v Canada (Attorney General)*, 2017 FCA 56.

⁴ *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Attorney General of Canada v Tjong*, A-672-95.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	D. B., self-represented
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