



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *TK v Canada Employment Insurance Commission*, 2021 SST 183

Tribunal File Number: AD-21-149

BETWEEN:

T. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 6, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) was laid off from his employment due to a shortage of work. An initial claim for employment insurance benefits was established effective February 2, 2020.

[3] The Claimant's last physical day of work was May 25, 2018, but he was paid salary continuance from May 28, 2018, to January 29, 2020. The employer later confirmed that the Claimant received an additional \$11,423.69 representing eight weeks severance pay after his salary continuance period was over on January 29, 2020.

[4] The Claimant received 36 weeks of benefits ending October 17, 2020. The additional \$11,423.69 representing eight weeks of severance after his salary continuance expired resulted in an overpayment on his claim. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed to the General Division.

[5] The General Division found that the Claimant received \$11,423.69 in earnings. It also found that the earnings had to be allocated starting the week of January 26, 2020. The General Division concluded that the Commission had correctly calculated the overpayment.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In support of his application for permission to appeal, the Claimant submits that he should receive 45 weeks of benefits in accordance with the pandemic rules. He puts forward that he only received 36 weeks based on where he lives.

[7] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[10] 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 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 his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[13] In support of his application for permission to appeal, the Claimant puts forward that he only received 36 weeks of benefits based on where he lives instead of the 45 weeks allowed by the pandemic rules. He considers this unfair because he contributed to the EI program for 40 years.

[14] Before the General Division, the Claimant did not dispute that he received earnings or how the Commission allocated them. He argued that he should be entitled to the same number of weeks of benefits as others who applied during the pandemic.

[15] I find that the General Division did not make an error when it concluded that the Claimant had earnings pursuant to section 35(2) of the *Employment Insurance Regulations* (EI Regulations) and that these earnings were correctly allocated pursuant to section 36(9) of the EI Regulations because the earnings were paid by reason of a separation from an employment.

[16] The Claimant submits that the Commission changed the rules to help people during the pandemic by giving 45 weeks of benefits to those who applied for them. He submits that he is treated unfairly because he applied before the pandemic. He puts forward that the situation is unjust because he lives in the region most affected by the pandemic.

[17] Although I sympathize with the Claimant who established a benefit period shortly before the emergency provisions related to the pandemic, I do not have the authority to change the law in order to allow the overpayment to be canceled.

[18] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[19] For the above mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVES:	T. K., Self-represented
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