



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MS v Canada Employment Insurance Commission*, 2021 SST 215

Tribunal File Number: AD-21-165

BETWEEN:

M. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 27, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) applied for employment insurance (EI) benefits when his employer reduced his hours from full-time to part-time. He received EI benefits for the weeks from September 8, 2019, to May 23, 2020. For most of that period, he reported 20 hours of work per week, and his earnings as \$17.00 per week. That figure was his hourly rate, not his actual weekly earnings of \$340.00. The Commission continued to pay the Claimant EI benefits based on the reported \$17.00 per week earnings.

[3] On August 16, 2020, the Claimant applied again for EI benefits after his job ended. On August 26, 2020, the Claimant reported his correct \$340.00 per week earnings for 2019 and early 2020. He explained that he thought the Commission would calculate his weekly earnings by multiplying the 20 hours by the \$17.00 hourly rate, to arrive at the correct weekly earnings of \$340.00. The Commission verbally notified the Claimant that he had underreported his earnings, and that an overpayment would result.

[4] The Claimant requested a reconsideration of this decision, and the Respondent maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division of the Tribunal.

[5] The General Division decided that, although it took the Commission one year to inform the Claimant, he had an obligation to return the money to the Respondent since he has received money by way of benefits to which he was not entitled. It determined that the Tribunal did not have jurisdiction to hear an appeal on the issue of write-off or to conclude a payment arrangement. The General Division dismissed the Claimant's appeal.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division.

[7] In support of his application for permission to appeal, the Claimant submits that the General Division ignored the evidence before it.

[8] I must decide whether it can be argued that the General Division committed a reviewable error, which gives the appeal a reasonable chance of success.

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

ISSUE

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

ANALYSIS

[11] 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:

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.

[12] 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.

[13] 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?

[14] In support of his application for permission to appeal, the Claimant submits that the General Division did not take into consideration that it was not his fault if the weekly earnings were miscalculated and that an overpayment resulted. He reported his earnings correctly as per his knowledge and understanding.

[15] The Claimant further submits that the Commission should have monitored his claim and called him to correct the mistake instead of waiting almost one year. The Claimant puts forward that he should not be penalized for the Commission's error and/or negligence. He submits that the Tribunal can write-off the debt in these circumstances.

[16] The *Employment Insurance Act* (EI Act) allows the Commission to reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.¹

[17] The Claimant served his waiting period and received 36 weeks of regular benefits from September 8, 2019 to May 23, 2020. He later received a decision and a notice of debt within 36 months.² Therefore, the Commission could reconsider his claim for benefits.

[18] The undisputed evidence shows that the Claimant reported 20 hours of work per week, and his earnings as \$17.00 per week. That figure was his hourly rate, not his actual weekly earnings of \$340.00. The Commission continued to pay the Claimant EI benefits based on the reported \$17.00 per week earnings. The corrected weekly earnings for the relevant period resulted in an overpayment of \$5,474.00.

¹ Article 52 of the EI Act.

² GD3-182, GD3-185 and GD3-186.

[19] Although I am sensitive to the situation of the Claimant, the Federal Court of Appeal has clearly decided that an applicant who receives money for which he is not entitled to, even following a mistake of the Commission, is not excused from having to repay it.³

[20] On the issue of a write off, I note that the General Division stayed within its jurisdiction when it concluded that it could not write off the Claimant's debt.⁴ Only the Federal Court, following a decision by the Commission on that issue, has the jurisdiction to hear an appeal on the issue of a write-off.⁵

[21] Finally, as stated by the General Division, the Claimant can apply to the *Canada Revenue Agency* for a payment arrangement to pay over time.

[22] 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

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

[24] The Tribunal recommends that the Commission render a decision on the issue of a write-off.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. S., Self-represented
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³ *Lanuzo v Canada (Attorney General)*, 2005 CAF 324.

⁴ Pursuant to section 56(1) of the *Employment Insurance Regulations*.

⁵ *M.L. v Canada Employment Insurance Commission*, 2016 SSTA DEI 476.