



Citation: *LL v Canada Employment Insurance Commission*, 2021 SST 669

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** L. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 18, 2021  
(GE-21-1098)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** November 15, 2021

**File number:** AD-21-332

## **Decision**

[1] Leave to appeal is refused. This means the appeal will not proceed.

## **Overview**

[2] From February to July 2016, the Applicant (Claimant) received maternity and parental benefits. She received the maximum number of weeks to which she was entitled. A few years later, the Defendant, the Canada Employment Insurance Commission (Commission), asked the Claimant to provide more information about her employment as part of a lengthy investigation relating to records of employment (ROE) issued by her employer.

[3] The Commission found that she did not work for the employer who issued her ROE and therefore, rejected the ROE provided by this employer as false. Since the Claimant was then no longer able to rely on this information to substantiate her claim for benefits, the Commission retroactively cancelled her benefits period. This resulted in an overpayment. It also issued a warning to the Claimant because it determined that she knowingly gave false or misleading information when she provided that ROE. Upon reconsideration, the Commission maintained its original decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division concluded that the Commission was correct in cancelling the benefit period. It further found that the Claimant had knowingly made a false or misleading representation and that the penalty was therefore justified under the law. The General Division concluded that the Commission acted judicially when it decided to impose a warning.

[5] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that the General Division made an error of jurisdiction and that it made important errors of fact.

[6] A letter was sent to the Claimant asking that she explain in detail her grounds of appeal. In her reply, the Claimant reiterates that she did work for the employer and submits errors of fact that the General Division made in rendering its decision.

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

[8] I am refusing 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* (DESD 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.

[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 her 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] The Claimant submits that she did work for the employer and enumerates errors of fact that she considers the General Division made in rendering its decision.<sup>1</sup>

[14] The General Division had to decide whether the Commission correctly cancelled the Claimant's benefit period and whether a warning penalty was justified under the law.

[15] In October 2018, the Major Fraud Division conducted an investigation into many ROEs emitted by the employer.<sup>2</sup> The employer's representatives, some employees and the Claimant were interviewed. On January 28, 2020, the Commission decided to cancel the Claimant's claim for benefits because it found that she had submitted a false ROE.

[16] The General Division found that many inconsistencies and incongruities appeared from the statements given by the Claimant and the manager of the employer, both to the investigators and at the hearing. These casted serious doubt into the veracity of those testimonies. The General Division did not believe

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<sup>1</sup> See ADN4-1 to ADN4-4.

<sup>2</sup> See GD3-32 to GD3-196.

that the Claimant worked for the employer from February 29, 2016 to July 17, 2016, and that the ROE she presented to the Commission was true.

[17] The General Division noted inconsistencies and incongruities in its decision regarding the reason the Claimant was hired, the motivation for her to work so far from home, the schedule and hours really worked, and the actual work the Claimant was supposed to have performed for the employer.

[18] Furthermore, an employee declared that during her time with the employer, she did not work with any pregnant servers, supervisors, or managers.<sup>3</sup> When shown photos of alleged employees whose period of employment overlapped her own, the witness was unable to identify the Claimant as an employee of the employer during the time she worked.<sup>4</sup>

[19] Although given the opportunity, the Claimant did not show any purchases or activity along the drive from her home in Toronto to her alleged employment located an hour and a half away.<sup>5</sup>

[20] I find that in her application for leave to appeal, and supplementary submissions, the Claimant is essentially attempting to re-present her case in the hope of obtaining a different result. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can re-present evidence and hope for a new favorable outcome.

[21] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, I find no reviewable error of jurisdiction, law, or any important errors of fact made by the General Division. I therefore have no choice but to find that the appeal has no reasonable chance of success.

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<sup>3</sup> See GD3-34 to GD3-37.

<sup>4</sup> See GD3-54 to GD3-55.

<sup>5</sup> See GD3-109 to GD3-112.

## **Conclusion**

[22] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division