



Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 542

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** A. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 13, 2022  
(GE-22-20)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** June 21, 2022

**File number:** AD-22-331

## Decision

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

## Overview

[2] The General Division decided that the Applicant (Claimant) had received earnings of \$54,153.85 from Employer #1, which needed to be allocated.<sup>1</sup>

[3] The Claimant filed an application to rescind or amend the decision of the General Division in order to introduce evidence.<sup>2</sup> He submitted a legal invoice to show that he had incurred legal expenses that he considered needed to be deducted from the allocated amount. The General Division dismissed the application.

[4] The Claimant is now requesting leave to appeal to the Appeal Division on the dismissal of his application to rescind or amend the General Division decision.

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

[6] I am refusing leave to appeal.

## Issue

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

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<sup>1</sup> See General Division decision dated November 4, 2021, file number GE-21-1341.

<sup>2</sup> Pursuant to section 66 of the *Department of Employment and Social Development Act*.

## Analysis

[8] 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.

[9] 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.

[10] 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?**

[11] The Claimant submits that the General Division did not give him enough time to obtain a revised invoice. He submits that the burden of providing a third party document should not lie on him, especially that the Respondent (Commission) did not show any interest in his invoice. The Claimant puts forward that he explained to the General Division that most of the invoice was concerning

the separation with Employer #1 with minor work done “in kind” with relation to Employer #2.

[12] The law indicates that the General Division may rescind or amend a decision given by it if new facts are presented or if it is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact.<sup>3</sup>

[13] The General Division reviewed the legal invoice filed by the Claimant in support of his application to rescind or amend and it found that it did not concern Employer #1 for which it was initially determined he had earnings that needed to be allocated. It did not find the Claimant’s testimony that he had incurred legal fees for Employer #1 to be persuasive because it was not reflected in the invoice.

[14] The Claimant submits that the General Division did not give him enough time to obtain a revised invoice. The hearing took place on March 30, 2022. He was given until April 4, 2022, to file the revised version.

[15] I note that the General Division decision was rendered on April 13, 2022. The General Division mentioned in its decision that the Claimant still had not filed the revised invoice as of April 13, 2022.

[16] Furthermore, if the invoice contained a clerical error as invoked by the Claimant, he had until November 3, 2022, to file his application to rescind or amend the General Division decision with the appropriate invoice.<sup>4</sup> He chose to file his application before having the invoice revised.

[17] Therefore, I cannot find that the General Division failed to observe a principal of natural justice.

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<sup>3</sup> See section 66(1) (a) of the DESD Act.

<sup>4</sup> See section 66(2) of the DESD Act.

[18] The Claimant submits that the General Division should not have placed on him the burden of providing a third party document, especially that the Commission completely disregarded his invoice.

[19] I see no reviewable error made by the General Division. Case law is abundant to the effect that if a claimant claims that the amounts received from his former employer were paid out for reasons other than the loss of revenue arising from employment, it is up to the claimant to demonstrate that due to "special circumstances" some portion of it should be regarded as compensation for some other expense or loss.<sup>5</sup>

[20] The Claimant submits that the General Division made an error when it ignored his testimony that most of the invoice was concerning the separation with Employer #1 with minor work done "in kind" with relation to Employer #2.

[21] The General Division was not persuaded by the Claimant's testimony that he incurred legal fees for Employer #1 because it was simply not reflected in the invoice provided by the Claimant in support of his application to rescind or amend. The invoice clearly refers to professional services rendered to Employer #2.

[22] I am of the view that the Claimant did not raise before the General Division any relevant new facts that either happened after the decision had been rendered or had happened prior to the decision but could not have been discovered by him acting diligently.<sup>6</sup> He also has not demonstrated that the General Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact.

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<sup>5</sup> *Canada (Attorney General) v Radigan*, A-567-99; *Bourgeois v Canada (Attorney General)*, 2004 FCA 117.

<sup>6</sup> *Canada (Attorney General) v Chan*, (1994) F.C.J. no 1916 (C.A.); *Canada (Attorney General) v Hines*, 2011 FCA 252:

[23] The invoice does not refer in any way to Employer #1 for which it was initially determined he had earnings that needed to be allocated. Furthermore, the Claimant could not say exactly how much of the invoice concerned Employer #1.

[24] After reviewing the appeal docket, the General Division's rescind or amend decision and the Claimant's arguments in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division