

COURT FILE No: T-198-23
SST File No: AD -22-842

FEDERAL COURT

BETWEEN:

WEI CHEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER (section 18.1 of the Federal Court Act)

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at the time and date: -----.
Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard Federal Court at *180 Queen Street West Toronto M5V3L6*.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

Issued by: _____
(Registry Officer)

Address of local office: 180 Queen Street West
Toronto M5V3L6

TO: ATTORNEY GENERAL OF CANADA

Respondent

From: WEI CHEN
311-6 Henry Street Toronto,
M5T1X1

Email: applausechen1997@gmail.com

Self- represented

Application

This is an application for judicial review in respect of SOCIAL SECURITY TRIBUNAL OF CANADA –Appeal Division (AD) Decision made under section 58(2) of the Department of Employment and Social Development Act (DESD Act) dated December 29, 2022 to deny the applicant permission for the appeal, file no: AD-22-842.

The applicant makes an application for: An order to set aside the decisions of the AD and remit the matter to the Chief AD or his delegate for re-determination; Costs of this application on a substantial indemnity basis; and such further and other relief as Counsel may advise and this Honourable Court may permit.

The grounds for the application are:

The grounds below for a review pursuant to Sec18.1 of the Federal Court Act:

1. The both SST-GD members failed to exercise their jurisdiction because both parties' clear evidence indicated that this case essential, substantive and core issue in dispute whether or not the Claimant provided the Record of Employment (ROE) that was false, fraudulent. The Commission had no right to delete his hours unless and until the fraudulent, false alleged fact was found. This dispute issue fell within SST Jurisdiction. The Applicant has an arguable case, there was no reason to refuse his appeal.
2. Regarding the core fraudulent dispute the facts the GD or AD member didn't address and ignored these key facts.
3. The GD member ignored the above priority dispute issue, and ordered the CRA for determination, the Claimant argues the fraudulent issue doesn't fall into the CRA purview pursuant to test of s.90 (1) of the EI Act. The member erred in law in his interpretation. In addition, the issue of the entitlement should be within the GD and AD, the issue of the insurability issues then take Revenue Canada and the Tax Court. Thus, in the applicant respecting view the GD failed to exercise his jurisdiction and also failed to consider the evidence the Claimant provided, and the AD had no reason to refuse the leave to appeal.
4. Whether this case be heard by the SST or Tax Court that was a matter for the Commission and the Claimant to decide. As a fair and impartial decision maker, the SST had no power to **order** the Commission to request the CRA for determination pursuant to s.32 of the SST Regulations after the Commission itself refused or failed to do so. Therefore, the GD member erred in principle when he made the order and the AD didn't review it.
5. The GD acted beyond its power, erred in law in his interpretation of section 32. After the Commission refused to apply the CRA, the first GD member took apprehension of bias to order it. In contrast, the Claimant requested the member to order the Commission to fully disclose the documents and info regarding the above alleged fraudulent evidence but the GD member refused

to respond to him and obviously biases, erred in law. And in fact he refused to exercise his power. However, The AD member failed to address those important issues.

6. Regarding whether the first GD member acted the beyond its power to order the Commission to request for CRA ruling. The AD member didn't address and ignore the second key fact.

7. The AD member failed understand the Claimant's points, on her ruling, the interesting thing is the same AD member, when she returned this case to GD for reconsideration, the Claimant made the similar opinions and under similar circumstances before her against the first GD member. However, she didn't believe that was attacking the competent member instead that was reasonable arguments. Before and after finding the same fact she made completely different decisions!

8. The second GD member **did prejudice** the outcome without regard to the claimant's evidence and arguments, in the beginning of hearing she stated she had no power to change the CRA decision.

9. On May 16, 2022 pursuant to the AD's direction, she ordered the GD should consider the Claimant evidence and arguments. The second GD member ignored her direction. But the same AD member upheld the GD's decision and she **ignored her own directions**, So her first order and her second order contradicted each other. In the claimant's respectful view, there wasn't a rational basis for the decision and in fact the second GD member failed to follow the AD member herself directions.

10. The AD member, who made her second decision, refused the permission in relation to the **Claimant's complaint** about her first decision dated May 16, 2022 in which she made the decision without the complete evidence record before her, in which the material was still on the hand of the secretariat to SST. Under the circumstance, the AD member should initiative recuse herself to make the second time decision, and should ask other member to do so. That would be fair.

11. The members presumptively had accepted the truth of the Commission's finding that the ROE was fraudulent without having heard the testimonies of the claimant and his employer, actually by ignoring their evidence. Therefore, the member made the error in fact and failed to properly consider any of the evidence before her, an obvious injustice and the AD failed to review it.

12. The both members failed to follow the procedures and observe the natural justice to make their decisions.

13. The AD member chose the wrong standard of review when she reviewed the decision of the GD decision or, even if the AD chose the correct standard of review, she applied it incorrectly in her review of the decision.

Relief Sought

14. Given the forgoing, the applicant respectfully submits that in this case had an arguable aground and the appeal has a reasonable chance of success. And set aside the decisions of the AD and remit the matter to the Chief AD or his delegate for re-determination.

This application will be supported by the following material:

1. Affidavit of WEI CHEN sworn will include to application record;
2. The Applicant wishes the Social Security Tribunal to forward material *to the Registry*, to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the (*tribunal*) to the applicant and to the Registry:
 - A. On or about August 22, 2022, the Tribunal GD member Lilian Klein took her note in the system, why she adjourned the hearing;
 - B. On Aug 09 and 22 and Oct. 2022 the hearings' interpreter's names and their company, and the interpreters' respective license numbers;
 - C. The AD member Janet Lew didn't see the material and made her decision to return the case to the GD reconsideration. On or about May 19, 2022 because the Claimant (applicant) complained this matter via phoning to the tribunal agent name Andre and Pierre, On or about May 26, 2022 the member or other tribunal officer then directed adding the material for the GD review. The documents coding no. are AD6-1 and 2;
 - D. The Applicant specially needs the detailed info about the agents how to take **their notes** into the system and then **who** made the decision adding the material for the GD review.

Applicant – Wei Chen

January 12, 2023

[SOR/2021-151, s. 22](#)