Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. F. v Canada Employment Insurance Commission*, 2020 SST 615

Tribunal File Number: AD-20-687

BETWEEN:

A. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: July 20, 2020

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, A. F. (Claimant), lost his job in July 2019. He applied for Employment Insurance Benefits on August 16, 2019 and qualified for a certain number of weeks of benefits. The number of weeks was based on the hours of insurable employment accepted by the Respondent, the Canada Employment Insurance Commission (Commission), as well as the economic region in which he was living. Sometime after his application, he moved to another city that was in a different economic region. The Claimant could have qualified for more weeks of benefits if the calculation of weeks of benefits for his claim had used the unemployment rate for the region to which he moved.

[3] Just as the Claimant's weeks of benefits were expiring, the Claimant requested a reconsideration. In his March 22, 2020, request form, the Claimant stated, "It has been decided that [his] Employment Insurance claim will end on March 21, 2020." He asked that the Commission extend his benefit period. The Commission responded with a reconsideration decision that, under the heading "weeks of entitlement", said that it was not changing its decision of March 20, 2020.

[4] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal. He asked that he receive the maximum number of weeks of benefits. At the hearing, he also asked the General Division to help him determine his entitlement to the Canada Emergency Response Benefit (CERB). The General Division dismissed his appeal, and the Claimant is now seeking leave to appeal to the Appeal Division.

[5] Leave to appeal is refused. The Claimant has not made out an arguable case that the General Division made an error of law or of jurisdiction.

PRELIMINARY MATTERS

[6] Neither the Claimant nor the Commission has disputed that the Claimant's weeks of regular benefits ended as of March 21, 2020.[1] The Claimant appears to have received a decision to this effect and he has not expressed any concern that a copy of the decision is absent from the Commission's file. Therefore, I will proceed as though the original decision exists, and on the assumption that the decision either states, or implies, the number of weeks of benefits to which the Claimant qualified.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[7] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is an arguable case. This would be some argument that the Claimant could make and possibly win.[2]

[8] "Grounds of appeal" means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:[3]

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.

ISSUES

[9] Is there an arguable case that the General Division failed to observe a principle of natural justice?

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[1] Claimant's request for reconsideration, GD3-37; Commissions submissions to the General Division, GD4-2.
[2] This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.
[3] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act.*

[10] Is there an arguable case that the General Division made an error of law in how it interpreted "ordinarily resident" when it determined the economic region that should be used to calculate the Claimant's benefits?

[11] Is there an arguable case that the General Division failed to exercise its jurisdiction to decide the Claimant's entitlement to Canadian Emergency Response Benefits (CERB)?

ANALYSIS

Natural Justice

[12] The Claimant submitted that the General Division did not follow procedural fairness. This is the same as saying that the General Division failed to observe a principle of natural justice.

[13] There is no arguable case that the General Division made an error by failing to observe a principle of natural justice.

[14] The Claimant did not explain how the General Division process was unfair. He did not claim that the General Division did not give him an adequate opportunity to be heard or that it filed to give him all the information he needed to argue his appeal. He did not complain about the manner in which the General Division conducted the hearing or that he could not understand the process. He did not identify any problem with the General Division appeal process that may have affected his right to be heard or to answer the Commission's evidence or argument. In addition, the Claimant did not suggest that the General Division member was biased or that the member had prejudged the matter.

[15] I reviewed the General Division record but I did not discover any instance in which the process may have been unfair to the Claimant.

Interpretation of "ordinarily resident"

[16] When the Claimant lost his job, he could not find work in the same area so he moved. The region in which he now lives has a higher regional rate of unemployment. Because of this, the Claimant believes he should qualify for an increased number of weeks of benefits.

[17] The General Division did not accept this argument. It said that the law requires the Commission to use the regional rate of employment from the area in which he is "ordinarily resident". The General Division held that the Claimant was "ordinarily resident" in the region of his original residence.[4]

[18] There is no arguable case that this was an error of law. Under the *Employment Insurance Act* (EI Act) and the *Employment Insurance Regulations* (Regulations), the regional rate of employment that is used to determine the benefits payable to persons who qualify,[5] is the rate for the region in which the Claimant was "ordinarily resident".[6] Ordinary residence is determined using the Claimant's residence during the week which is the later of 1) the week in which the Claimant suffered an interruption of earnings, and 2) the week in which the Claimant made his initial claim for benefits.[7] In the Claimant's case, the initial claim, or application, date appears to be the later date. The Claimant did not move until sometime after he had applied for benefits, and he applied for benefits after his interruption of earnings. Therefore, the Claimant was "ordinarily resident" in his original residence–not in the place to which he moved. There is no arguable case that the General Division should have, or could have, used the unemployment rate in the economic region to which he moved.

[19] There is also no arguable case that the General Division should have extended his weeks of regular benefits. The General Division was correct that the Claimant was only entitled to the weeks of benefits associated with the economic region of his ordinary residence, and it was correct that it was required to apply the law.[8]

Failure to consider CERB Benefits

[20] The Claimant is still seeking certainty as to his entitlement to CERB. He is collecting those benefits now but is concerned that the Commission might claw them back in the future.

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[4] General Division, para 14.
[5] Section 7(1) of the EI Act.
[6] Section 17(1) of the Regulations.
[7] Section 10(1) of the EI Act.
[8] General Division decision, para 15.

The General Division declined to rule on the Claimant's entitlement to CERB benefits, and the Claimant has raised this concern again at the Appeal Division.

[21] Since I can only consider whether the General Division may have made an error, I will assume that the Claimant means to argue that the General Division should have considered his CERB entitlement.

[22] There is no arguable case that the General Division failed to exercise its jurisdiction by not making a decision on the Claimant's CERB benefits. The Commission had not denied CERB benefits to the Claimant or tried to recover CERB benefits from the Claimant. The General Division could not rule on hypothetical circumstances.

[23] Furthermore, the General Division has authority to consider appeals from reconsideration[9] decisions **only**.[10] The Claimant had not received a CERB decision with which he disagrees, had not sought a reconsideration of that decision, and did not bring an appeal of any such reconsideration decision to the General Division. There was no reconsideration decision on the CERB issue before the General Division. The Claimant cannot possibly succeed in an argument that the General Division should have ruled on his entitlement to CERB.

[24] The Claimant has no reasonable chance of success.

CONCLUSION

[25] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	A. F., Self-represented

[9] A reconsideration decision is a decision made by the Commission under section 112of the EI Act.
[10] Section 113 of the EI Act.