



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *BM v Canada Employment Insurance Commission*, 2020 SST 947

Tribunal File Number: AD-20-807

BETWEEN:

B. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 4, 2020

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused because the appeal does not have a reasonable chance of success.

OVERVIEW

[2] The Applicant, B. M. (Claimant), is seeking leave to appeal the General Division's decision. Leave to appeal means that applicants have to get permission from the Appeal Division. Applicants have to get this permission before they can move on to the next stage of the appeal process. Applicants have to show that the appeal has a reasonable chance of success. This is the same thing as having an arguable case at law.¹

[3] The General Division found that the Claimant was entitled to a maximum of 25 weeks of Employment Insurance (EI) benefits. The Claimant argues that the General Division made a legal error when it came to this conclusion. The Claimant claims that the General Division failed to consider that she was eligible for the Canada Emergency Response Benefit (CERB). She claims that she should have received the CERB for a majority of the weeks when she received EI.

[4] I have to decide whether the appeal has a reasonable chance of success. For the reasons that follow, I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am refusing leave to appeal.

ISSUE

[5] Is there an arguable case that the General Division failed to consider whether the Claimant was eligible for the Canada Emergency Response Benefit?

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ANALYSIS

[6] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the reasons for appeal fall into at least one of the types of errors listed in section 58(1) of the *Department of Employment and Social Development (DESDA)*. These errors would be where the General Division:

- (a) did not hold a fair hearing, or the process was unfair;
- (b) did not decide an issue that it should have decided, or it decided something that it did not have the power to decide;
- (c) made an error of law when making a decision; or
- (d) based its decision on an important error of fact.²

[7] The appeal also has to have a reasonable chance of success. This is a relatively low bar because applicants do not have to prove their case at this stage of the appeal process. As long as I am satisfied that there is an arguable case, it is enough to grant leave to appeal.

Background history

[8] The Claimant applied for EI benefits on February 25, 2020. The Respondent, the Canada Employment Insurance Commission (Commission), accepted her claim for benefits.

[9] The Claimant served an initial waiting period. Once the waiting period ended, the Claimant received \$573 in weekly EI benefits.³ She received 25 weeks of benefits up to and including the week of August 9, 2020.

[10] The Claimant asked the Commission to reconsider and recalculate the number of weeks of benefits to which she was entitled.⁴ She stated that there were several reasons why she was

² Under section 58(1)(c) of the DESDA, there is a ground of appeal if the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

³ According to the Commission's pay history details at GD3-31. The Claimant testified that there were delays in payment of her claim with the pandemic. The payments have since been resolved.

⁴ See Request for Reconsideration filed on August 25, 2020, at GD3-32 to GD3-33.

unable to return to work as a hygienist. One of these reasons included the pandemic. She wrote that she would appreciate support to allow her to start her own business.

[11] On reconsideration, the Commission maintained its decision.⁵ It denied that she was entitled to receive additional weeks of benefits.

[12] The Claimant appealed the Commission's reconsideration decision to the General Division.⁶ She argued that the Commission had not provided any information to "satisfy [her] of their findings."⁷ She noted that her employer had wrongfully dismissed her from her job, through no fault of her own. Her employer dismissed her before the pandemic. She felt that she was not getting sufficient support.

[13] The General Division found that it did not have any authority to consider whether the Claimant's employer had wrongfully dismissed her from her job. In other words, the fact that the Claimant's employer might have wrongfully dismissed her had no bearing on how many weeks of EI benefits the Claimant was entitled to get.

[14] The General Division determined that the *Employment Insurance Act* (EIA) and Schedule I to the EIA set out the maximum number of weeks of EI benefits a claimant could receive. The number of weeks of benefits is based on a claimant's hours of insurable employment and the rate of unemployment in the region in which a claimant resided when they applied for benefits.

[15] The General Division calculated that the Claimant was entitled to a maximum of 25 weeks of EI benefits. The General Division acknowledged that the Claimant was facing financial hardship. Her job ended just before the pandemic began in Canada. She has been unable to find another job. The General Division determined that, despite the Claimant's financial hardship, it could not award additional weeks of EI benefits.

Is there an arguable case that the General Division failed to consider whether the Claimant

⁵ See reconsideration decision dated September 1, 2020, at GD3-35 to GD3-36.

⁶ Note: The Claimant used the wrong form in her appeal to the General Division but it is apparent that she was referring to the Commission's reconsideration decision when she argued that the General Division did not follow rules of procedural fairness.

⁷ See Claimant's Notice of Appeal filed with the General Division, at GD2-13.

was eligible for the Canada Emergency Response Benefit?

[16] No. The General Division did not fail to consider whether the Claimant was eligible for the CERB.

[17] The Claimant does not seem to be contesting the General Division's calculation of the maximum weeks of EI benefits. However, the Claimant argues that the General Division failed to consider that "the majority of [her] weeks unemployed [*sic*] could/should have been paid with CERB."⁸

[18] The Claimant claims that was eligible for both benefits. The Claimant argues that the General Division failed to consider the CERB when it decided her appeal. However, I do not see that the Claimant ever raised this issue before the General Division.

[19] The Claimant raised two arguments in her Notice of Appeal to the General Division. One argument was that the Commission did not sufficiently explain why she was not entitled to receive more weeks of benefits. The second argument was that she should have received more weeks of benefits because her employer had wrongfully dismissed her from her employment.

[20] In her oral arguments, the Claimant again claimed that her employer had wrongfully dismissed her. She also noted that she was reliant on EI benefits but expected to be on it for "a minimal period".⁹ The pandemic then hit.

[21] The Claimant did not raise the argument regarding the CERB at any point during the General Division hearing. As a result, the General Division did not address it. The General Division did not make an error when it did not consider the Claimant's eligibility for the CERB. The issue simply did not come up before the General Division.

[22] Even if the Claimant had raised this issue, the General Division did not have any authority to decide whether the Claimant was eligible for CERB. Its mandate is limited to the

⁸ Application to the Appeal Division – Employment Insurance, at AD1A-5.

⁹ At approximately 4:50 of the audio recording of the General Division hearing.

EIA, the *Canada Pension Plan* and the *Old Age Security Act*. Hence, the General Division did not make a legal error by not deciding whether the Claimant was eligible for CERB.

[23] I acknowledge that the Claimant is also arguing that the Commission should have let her convert her EI claim to a CERB claim. This is particularly so because there had been a gross delay in paying her any benefits at all. Unfortunately for the Claimant, she had applied for EI benefits on February 25, 2020, so getting CERB in place of EI benefits was not an option that was available. If the Claimant had applied for EI regular benefits after March 15, 2020, that would have been a different matter. Her application would have been processed through CERB in that case.

[24] Finally, I have reviewed the underlying record to ensure that the General Division did not misconstrue or mischaracterize any important evidence. The General Division's findings are consistent with the evidence.

CONCLUSION

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	B. M., Self-represented
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