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

[TRANSLATION]

Citation: *SM v Canada Employment Insurance Commission*, 2020 SST 1003

Tribunal File Number: AD-20-836

BETWEEN:

S. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 2, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] On May 28, 2020, the Applicant (Claimant) was injured at work. On June 3, 2020, he applied for sickness benefits. The Respondent, the Canada Employment Insurance Commission (Commission), paid him for three weeks of benefits, but at the rate for the Employment Insurance Emergency Response Benefit (EI ERB). The Claimant challenged that decision. After reconsideration, the Commission upheld its decision to pay him benefits at the EI ERB rate.

[3] The General Division determined that the *Employment Insurance Act* (EI Act) clearly indicates that a benefit period cannot be established with respect to sickness benefits between March 15, 2020, and September 26, 2020. It found that the Claimant is eligible only for the EI ERB, at the rate of $500 per week, as stated in the EI Act.

[4] The Claimant now seeks leave to appeal the General Division's decision. He argues that the General Division made an error of law.

[5] I must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[8] 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:

> (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> (c) 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.

[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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] In support of his application for leave to appeal, the Claimant argues that the General Division decided an issue that it should not have. He submits that the decision is based on legislation urgently issued to prevent victims of the pandemic from experiencing financial loss. He argues that the strict application of this legislation is penalizing him, and he is asking to be exempted from it. He says that the intent of the legislation was surely not to hurt people but to help those who were not entitled to the standard resources.

[12] The Claimant submits that the decision should lie with a judge who will determine the spirit of the legislation rather than the letter. He argues that it would be appropriate to retroactively amend or deviate from the EI Act.

[13] On December 1, 2020, the Claimant told the Appeal Division that he had no further submissions to make in support of his application for leave to appeal the General Division's decision.

[14] It is well established that the General Division has the authority to decide any question of law or fact that is necessary for the disposition of any application made under the EI Act.[1]

[15] On June 3, 2020, the Claimant filed an initial claim for Employment Insurance sickness benefits. The claim was established effective May 31, 2020.

[16] There is no dispute that the Claimant would have qualified for EI sickness benefits and therefore qualifies for the EI ERB.

[17] Under section 153.8(5) of the EI Act, for the period beginning on March 15, 2020, and ending on September 26, 2020, no benefit period is to be established with respect to any of the benefits referred to in section 153.5(3)(a), that is, regular or sickness benefits under Part I of the EI Act.

[18] Under section 153.10(1) of the EI Act, the weekly rate for the EI ERB is $500.

[19] Since the Claimant's claim for benefits was established effective May 31, 2020, which falls in the period beginning on March 15, 2020, and ending on September 26, 2020, the General Division did not make an error in finding that the Claimant is eligible only for the EI ERB, at the rate of $500 per week, as stated in the EI Act.

[20] Unfortunately for the Claimant, the Federal Court of Appeal has established that the requirements of the EI Act do not allow discrepancy and do not give the Tribunal

[1] Section 64(1) of the DESD Act.

discretion in its application.[2] Moreover, this case does not raise a statutory interpretation issue, since the language of the legislation is clear.

[21] I understand the Claimant's argument that the application of this emergency legislation is penalizing him. The fact remains that neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

[22] I find that the Claimant has not raised any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

[23] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

[24] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. M., self-represented

[2] *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.