



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *BG v Canada Employment Insurance Commission*, 2021 SST 70

Tribunal File Number: AD-21-45

BETWEEN:

B. G.

Applicant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: February 23, 2021

DECISION AND REASONS

DECISION

[1] The Application to the Appeal Division is refused.

OVERVIEW

[2] The Claimant B. G. is appealing the General Division's decision of January 21, 2021. The General Division found that the Claimant lost his employment at a waste and recycling company because of misconduct. Because of the misconduct, the Claimant was disqualified from receiving Employment Insurance benefits. He would have to repay any benefits that he had received. The Claimant does not contest any of these findings.

[3] The General Division also decided that it did not have any authority to decide whether the Claimant was eligible to receive the Canada Emergency Response Benefit (CERB). The General Division noted that the Canada Revenue Agency administers the CERB.

[4] The Claimant argues claims that the Commission should have cancelled his application for Employment Insurance benefits. That way, he could have applied for the CERB. He claims that the CERB told him that he was eligible for and would have received CERB payments for the months during which he did not work.

[5] An appeal before the Appeal Division is a two-step process. At this first step, an applicant has to get permission from the Appeal Division before they can move on to the next step of the appeal process. This means they 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

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not granting permission to the Claimant to move ahead with his appeal.

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

ISSUE

[7] Is there an arguable case that the General Division failed to decide whether the Commission should have cancelled his application for Employment Insurance benefits?

ANALYSIS

[8] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the General Division committed the type of error that is listed under section 58(1) of the *Department of Employment and Social Development Act* (DESDA). These errors are where the General Division:

- (a) Failed to provide a fair process;
- (b) Failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- (c) Made an error of law; or
- (d) Based its decision on an important factual error (perverse, capricious, or without regard for the evidence).

[9] The Claimant does not actually say that the General Division made any errors. But, I understand that he is suggesting that the General Division failed to decide whether the Commission should have cancelled his application for EI benefits.

[10] There is no evidence before me that the Claimant ever raised this issue with the General Division. There is no evidence either that he ever asked the Commission to cancel his application for EI benefits. Indeed, he does not mention anywhere in his Notice of Appeal to the General Division that he asked the Commission to cancel his EI application.

[11] Besides, the General Division did not have the authority to decide whether the Commission should have cancelled his application for Employment Insurance benefits.

[12] If a party is unhappy with the Commission's reconsideration decision, the *Employment Insurance Act* lets them appeal that decision to the Social Security Tribunal.² In other words, the Commission has to make a reconsideration decision on an issue before a party can appeal that reconsideration decision to the General Division.

[13] In this case, the Commission did not issue a reconsideration decision on whether to cancel the Claimant's EI application. Without such a reconsideration decision, the General Division did not have any authority or power to decide whether the Commission should have cancelled his application for EI benefits.

[14] In any event, the Claimant's application to the Appeal Division is entirely moot. Even if the General Division found that the Commission did not let the Claimant cancel his application for EI benefits, it would have been too late for him to apply for CERB anyway. The General Division made its decision on January 21, 2021. This was almost two months after the CERB closed to retroactive applications on December 2, 2020.

[15] In fact, it was already too late to apply by the time the Claimant received the Commission's reconsideration decision. He received the reconsideration decision sometime in mid-December 2020.³ But, the Claimant could no longer apply for the benefit after December 2, 2020.

[16] I do not know what relief or remedy could even be available to the Claimant, even if he had shown that the General Division failed to decide whether the Commission should have cancelled his application for EI benefits.

[17] In addition to these considerations, I question whether the Claimant would have even been eligible for the CERB. To be clear, I am not making any determination one way or the other about whether the Claimant might have been eligible for the benefit. But, the CERB was designed to provide income support for workers who cease working because of COVID-19.⁴ The

² *Employment Insurance Act*, section 113.

³ The Commission's reconsideration decision is dated December 17, 2020, at GD3-52 to GD3-53.

⁴ *Canada Emergency Response Benefit Act*, section 6(1).

General Division made it clear that the Claimant stopped working because of misconduct, not because of COVID-19.

[18] Finally, I have reviewed the underlying record to ensure the General Division did not misconstrue or mischaracterize any important evidence. The General Division's findings are consistent with the evidence. I also do not see any errors of law, either on the face of the record or otherwise.

CONCLUSION

[19] The Claimant does not have an arguable case under section 58(1) of the DESDA. The Application to the Appeal Division is refused.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	B. G., Self-represented
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