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

Citation: *CM v Canada Employment Insurance Commission*, 2021 SST 140

Tribunal File Number: AD-21-91

BETWEEN:

C. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: April 6, 2021

Canada

DECISION AND REASONS

DECISION

[1] I am refusing the application for leave to appeal.

OVERVIEW

[2] The Applicant, C. M. (Claimant), applied for Employment Insurance benefits after he left his employment in November 2020. The Respondent, the Canada Employment Insurance Commission (Commission), established a claim effective November 1, 2020. The Claimant reported income in the first week of his benefit period, which the Commission deducted from the payment for the first two weeks of his benefit period. The Claimant understood that the Commission had waived the usual waiting period. As a result, he believed that the Commission improperly deducted his earnings from the benefit he expected for the second week. The Commission disagreed, telling him that it had not waived his benefit period. It did not change its decision after the Claimant asked it to reconsider.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now seeking leave (asking for permission) to appeal to the Appeal Division.

[4] I am refusing leave to appeal because the Claimant does not have a reasonable chance of success. There is no arguable case that the General Division acted unfairly or that it made an error of fact or law.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] 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.[1]

---

[1] 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.

[6] "Grounds of appeal" means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:[2]

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

[7] Is there an arguable case that the General Division acted unfairly by asking the Claimant about whether he wanted to appeal his entitlement to a certain number of weeks of benefits?

[8] Is there an arguable case that the General Division made an error of law by rigidly applying the law?

[9] Is there an arguable case that the General Division made an error by failing to hold the Commission to its position that the Claimant was entitled to a waiver?

ANALYSIS

Fairness of the Process

[10] There is no arguable case that the General Division acted unfairly by asking the Claimant about whether he wanted to appeal the number of weeks of benefits to which he was entitled.

[11] The Claimant argues that had not known that his weeks of benefit entitlement would be an issue in the appeal. However, the issues were clearly set out in the reconsideration decision that the Claimant appealed to the General Division. One of the issues in the reconsideration decision was the number of weeks of benefit entitlement. The Claimant should not have been

[2] 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.*

surprised that the General Division would want to know why he was appealing this issue, or whether he wanted to appeal the issue.

[12] During the Claimant's hearing, the General Division member described the Commission's decision on the weeks of benefit entitlement. She explained that this was an issue in the appeal. The member also discussed the history of the file and how the Commission arrived at its reconsideration of its original benefit entitlement decision. She said that the Commission's reconsideration decision had increased the Claimant's weeks of benefits from 29 to 45 weeks. She also mentioned that 45 weeks was the maximum number of weeks that the Claimant could have received under the *Employment Insurance Act* (EI Act).

[13] The General Division member specifically questioned the Claimant about whether he meant to appeal the weeks of entitlement. The Claimant responded that he was satisfied with the weeks of benefits the Commission had given him, and he confirmed that he did not wish to dispute those weeks.[3]

[14] The Claimant may not have answered the General Division member's questions in the way he now wishes he had. However, he said nothing at the hearing to indicate that he was uncomfortable with how the General Division member addressed the question of his weeks of entitlement. He did not ask for additional time to consider his position.

[15] The General Division member said she would set the number of weeks of benefit entitlement aside.[4] By doing so, the General Division effectively confirmed the Commission's reconsideration decision that the Claimant was entitled to 45 weeks of benefits. However, the General Division was correct that 45 weeks is the maximum number of weeks of regular benefits that the Claimant could have received. This is still true regardless of the applicable regional rate of employment, or the number of hours of insurable employment that the Claimant accumulated.[5]

[16] In other words, neither the Claimant's assertion that he was not prepared to address the issue, nor the General Division's choice to set this issue aside, resulted in either actual or

---

[3] Audio recording of the General Division hearing at timestamp 00:13:05.
[4] General Division decision, para 7; see also audio recording of the General Division hearing at timestamp 00:13:20.
[5] Section 12(2) of the EI Act; see also Schedule 1 to the EI Act.

potential prejudice to the Claimant. Since there is no way that the Claimant could have been harmed by the manner in which the General Division proceeded, there is no arguable case that the process treated him unfairly.

Application of the Law as Written

[17] The Claimant appealed to the General Division because he disagreed with the Commission`s refusal to waive his one-week waiting period: He disagreed with how it applied his earnings during the waiting period to reduce his benefits.

[18] The Claimant has also pointed to what he believes is an oversight in the EI Act. The EI Act does not offer a waiver of the waiting period for those whose benefit period began at any time between October 25, 2020, and January 31, 2021. However, the EI Act does offer a waiver of the waiting period for claimants whose benefit period began between September 27, 2020, and October 25, 2020.[6] The Claimant notes that the Commission will also waive the waiting period for a claimant whose benefit period begins after January 31, 2021.[7]

[19] The Claimant's benefit period began on November 1, 2020, so he does not benefit from either waiver. He argues that there is no reason for this and that it is unfair to him. The Claimant does not accept that the General Division must apply the law as written. He referred to how the Canada Revenue Agency (CRA) changed the earnings threshold for the Canadian Emergency Response Benefit (CERB). As I understand it, the Claimant believes that this means the law is flexible.

[20] However, the General Division is separate from both the CRA and the Commission. It does not matter whether and how CRA may have changed its requirements. It does not matter that the Commission's requirements have changed. It would not matter even if the Claimant could show that the Commission had relaxed its requirements in some other case where a claimant's circumstances were identical to those of the Claimant.

[21] The General Division simply has no discretion in this matter. The law clearly identifies when a waiver may apply. The General Division does not have the flexibility to refuse to apply

---

[6] Section 153.191 of the *Employment Insurance Act*.
[7] Section 39.01 of the *Employment Insurance Regulations*.

the law that actually applies to the Claimant, regardless of whether that law has seen some recent changes, or how some other agency has applied the law.

[22] There is no arguable case that the General Division can have made an error of law by following the law. To the contrary, the General Division would have made an error of law if it had not applied the law, or if its interpretation of the law was inconsistent with the EI Act or *Employment Insurance Regulations* (Regulations), or with binding decisions of higher courts.

[23] I can understand why the Claimant feels that the law operates unfairly to exclude him from a waiver. However, he has pointed to any provision in the EI Act or Regulations, or to a test described in any court decisions, that the General Division failed to apply or misapplied. If the Claimant disagrees with how the EI Act or Regulations have been drafted, he would need to look elsewhere to have the law changed. The Social Security Tribunal has no power to amend the legislation.

Misrepresentation by Commission

[24] The Claimant mentioned in his leave to appeal application that the Commission had informed him that it would waive his waiting period. However, it is not clear whether he is arguing that the *General Division* made a mistake about this, and it is not clear what that mistake might have been.

[25] I doubt that the Claimant thinks the General Division made a mistake of fact when it accepted that the Claimant received incorrect or misleading information from the Commission about the waiting period.[8] This is what the Claimant told the General Division and nothing in his leave to appeal application suggests that his position has changed.

[26] There is no arguable case that the General Division made an error of law by failing to consider how the Commission's information may have misled him. The law specifies who is entitled to a waiver. It does not make an exception for those who receive incorrect advice, or

[8] General Division decision, para 17.

offer any other exception. The General Division was correct it could not change or reinterpret the law.[9]

Other Errors

[27] I have reviewed the file to see if the Claimant may have some other arguable case that the General Division ignored or overlooked other relevant evidence that could have affected any of its findings.[10] Unfortunately for the Claimant, I have not discovered an arguable case.

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

CONCLUSION

[29] I am refusing the Claimant's application for leave to appeal.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	C. M., Self-represented

[9] *Ibid.*
[10] I am following the direction of the Federal Court in cases such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.