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

Citation: *RP v Canada Employment Insurance Commission*, 2021 SST 210

Tribunal File Number: AD-21-153

BETWEEN:

R. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 25, 2021

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) worked until March 24, 2020, at which time he finished due to a shortage of work. An initial claim for benefits was established effective March 29, 2020. The Respondent, the Canada Employment Insurance Commission (Commission), paid him for 17 weeks of benefits, but at the rate of the *Employment Insurance Emergency Response Benefit* (EI ERB).

[3] The Claimant challenged that decision and argued that he did not stop working because of the pandemic but due to a shortage of work. Therefore, based on his insurable hours, and paid premiums, his weekly benefits rate should have been $567. After reconsideration, the Commission upheld its decision to pay him benefits at the EI ERB rate of $500 per week.

[4] The General Division determined that the *Employment Insurance Act* (EI Act) indicates that a benefit period cannot be established with respect to regular 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.

[5] The Claimant now seeks leave to appeal the General Division's decision. He essentially reiterates the arguments he made before the General Division. He submits that the General Division rendered a decision less than 24 hours after he argued his case, which demonstrates that it had already decided the case before the hearing.

[6] On May 4, 2021, I requested that the Claimant explain in detail his grounds of appeal. On May 21, 2021, the Claimant advised the Tribunal that he had no new arguments to submit in support of his application for leave to appeal.

[7] 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.

[8] I refuse 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

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[10] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

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.

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

[12] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[13] The Claimant, in his application for leave to appeal, essentially reiterates the arguments he made before the General Division. He submits that he should receive EI benefits and not the EI ERB benefits, because he stopped working due to a layoff, not due to COVID-19. He argues that claimants pay premiums based on a percentage of salary. Therefore, those paying higher premiums through a higher salary are penalized by the $500.00 EI ERB weekly benefit rate.

[14] On March 25, 2020, the Claimant filed an initial claim for EI benefits. The claim was established effective March 29, 2020.

[15] The undisputed evidence shows that the Claimant could have qualified for EI benefits and that he qualifies for the EI ERB.

[16] As determined by the General Division, claimants who could have started a benefit period for regular EI benefits between March 15, 2020 and September 26, 2020 cannot chose between claiming regular EI benefits or the EI ERB benefits. They can only start a benefit period for EI-ERB benefits.[1] The weekly rate for the EI-ERB is $500.[2]

[17] Since the Claimant's claim for benefits was established effective March 29, 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. The fact that the General Division made its decision quickly does not affect this conclusion.

[1] Sections 153.5(3) (a) and 153.8(5) of the EI Act.
[2] Section 153.10(1) of the EI Act.

[18] 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 discretion in its application.[3] Moreover, this case does not raise a statutory interpretation issue, since the language of the legislation is clear and unambiguous.

[19] I understand the Claimant's argument that the application of this emergency legislation is penalizing him and others. However, neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

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

[21] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. P., Self-represented

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