



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CS v Canada Employment Insurance Commission*, 2021 SST 219

Tribunal File Number: AD-21-80

BETWEEN:

C. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: May 28, 2021

DECISION AND REASONS

DECISION

[1] C. S. is the Applicant in this case. I am refusing her request for leave (or permission) to appeal. The Tribunal will close her appeal file.

OVERVIEW

[2] The Applicant applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) paid her sickness benefits and regular benefits. The Commission had to recalculate information about the Applicant's claim several times. As a result, the Commission says the Applicant was overpaid almost \$1,300.

[3] The Applicant appealed the Commission's decision to the Tribunal's General Division. She didn't challenge a particular decision that the Commission had made. Instead, her goal was simply to cancel the overpayment.

[4] The General Division summarized the Applicant's request by saying that there seemed to be four ways in which she was trying to cancel the overpayment:

- Could she collect more than 15 weeks of sickness benefits?
- Could her benefit period extend past February 8, 2020?
- Could she collect regular benefits during some of the weeks when she collected sickness benefits?
- Did the Commission make a mistake calculating an assignment of benefits?

[5] The General Division decided the first two issues in the Commission's favour. In other words, the Applicant could only collect 15 weeks of sickness benefits and her benefit period ended on February 8, 2020.

[6] However, the General Division concluded that the Commission had not yet reconsidered the last two issues. So, the Tribunal had no power to weigh in on those issues.

[7] The Applicant now wants to appeal the General Division decision to the Tribunal's Appeal Division. But the Applicant has not really pointed to errors in the General Division decision. Instead, she continues to ask for different ways of cancelling her overpayment.

[8] The Applicant's appeal has no reasonable chance of success. As a result, I must refuse her request for permission to appeal.

ISSUE

[9] This decision focuses on one issue: Does the appeal have any reasonable chance of success?

ANALYSIS

[10] Appeal Division files follow the two-step process described in the *Department of Employment and Social Development Act* (DESD Act). This appeal is at step one: permission to appeal.

[11] I must refuse permission to appeal if the Applicant's appeal has no reasonable chance of success.¹

[12] To decide this question, I had to consider whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed under section 58(1) the DESD Act. Briefly, the relevant errors are about whether the General Division:

- a) provided a fair process;
- b) decided all the questions that it had to decide, without deciding questions that were beyond its powers to decide;
- c) misinterpreted the law; and
- d) based its decision on an important error about the facts of the case.

¹ Section 58(2) of the DESD Act establishes this legal test.

The appeal has no reasonable chance of success.

[13] In her appeal, the Applicant asks to be paid sickness benefits from September 1 to September 21, 2019. By that time, however, the Applicant had already received the maximum amount of sickness benefits: 15 weeks. The General Division decided that she is not entitled to any other weeks of sickness benefits. I see no possible error in that part of the General Division decision.

[14] In her appeal, the Applicant also asked to be paid regular benefits for the week starting March 3, 2019. I see no sign that the Applicant asked the Commission to reconsider this issue before filing her appeal with the General Division. In fact, she seems to have made her reconsideration request around the day of her General Division hearing.²

[15] In the circumstances, this issue was not within the General Division's jurisdiction and it was clearly right not to consider it.³

[16] Finally, the Applicant asked the Tribunal to help with the calculation of her "assignment of benefits". The General Division concluded that this issue was outside its jurisdiction because the Commission had not yet reconsidered the issue. The Applicant has not challenged that conclusion and has now asked the Commission to reconsider the issue. Once again, therefore, I see no possible error in this part of the General Division decision.

[17] Aside from the Applicant's arguments, I also reviewed the file and examined the General Division decision. The General Division decided which issues it could consider and those that were premature.

[18] The evidence supports the General Division's decision. In addition, my review of the file did not reveal relevant evidence that the General Division might have ignored or misinterpreted.⁴ Finally, the Applicant has not argued that the General Division acted unfairly towards her.

² See pages AD1-4 and AD6-2.

³ Parenthetically, the Commission's records seem to indicate that the Applicant worked during the week starting March 3, 2019: see pages GD3-34, GD3-68, GD3-75, and GD3-118.

⁴ Federal Court decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615 say that I should normally grant leave to appeal if the General Division might have ignored or misinterpreted relevant evidence. This is true even if the Applicant's written documents aren't perfect.

CONCLUSION

[19] I sympathize with the Applicant's circumstances. However, I have concluded that her appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	C. S., self-represented
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