



Citation: *JB v Canada Employment Insurance Commission*, 2021 SST 339

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. B.
Representative: Melissa Shurvell
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 3, 2021 GE-21-777

Tribunal member: Pierre Lafontaine
Decision date: July 14, 2021
File number: AD-21-223

DECISION

[1] Leave to appeal is refused. This means the appeal will not proceed.

OVERVIEW

[2] The Applicant (Claimant) established an initial claim for regular employment insurance (EI) benefits on December 22, 2019. She filed renewal applications on April 15, 2020, July 1, 2020, and December 18, 2020.

[3] In April 2021, the Claimant contacted the Canada Employment Insurance Commission (Commission), and requested that the EI benefits she had received be replaced with *Emergency Response Benefits* (EI-ERB). The Commission refused her request. After reconsideration, the Commission upheld its initial decision.

[4] The General Division determined that the Claimant made her initial claim on December 20, 2019, and a 52 weeks benefit period was established, ending in December 2020. It determined that the Claimant's subsequent renewals were based on the same benefit period. The General Division determined that only claims starting from March 15, 2020, could be a claim for EI-ERB. It concluded that the Claimant's benefits could not be changed from regular EI benefits to EI-ERB.

[5] The Claimant now seeks leave to appeal the General Division's decision. She submits that the General Division refused to exercise its jurisdiction.

[6] I must decide whether the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

ANALYSIS

[9] 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.

[10] 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 her 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.

[11] 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?

[12] The Claimant, in her application for leave to appeal, submits that the General Division did not decide an issue that it should have decided. She puts forward that the basis of her appeal before the General Division was the Commission's refusal to cancel her regular EI benefits claim so that she could receive EI-ERB. She submits that the General Division did not decide this issue.

[13] Before the General Division, the Claimant expressed disappointment that she is unable to receive EI-ERB because her claim was reactivated versus being a new claim. She stated that relevant information was not provided to her by the Commission to enable her to receive the extra funds EI-ERB would have provided to her.

[14] It is undisputed that on December 20, 2019, the Claimant filed an initial claim for EI regular benefits. The claim was established effective December 22, 2019. She filed renewal applications on April 15, 2020, July 1, 2020, and December 18, 2020.

[15] As determined by the General Division, only claimants who started a benefit period between March 15, 2020 and September 26, 2020, could receive EI-ERB.¹

[16] Since the Claimant's claim for benefits was established effective December 22, 2019, which falls short of the period beginning on March 15, 2020, and that subsequent applications were renewals, the General Division did not make an error in finding the Claimant not eligible for the EI-ERB, pursuant to the *Employment Insurance Act* (EI Act).

¹ Section 153.8(5) of the EI Act, section 153.5(3) (a) of the EI Act.

[17] The Claimant submits that the General Division did not decide an issue that it should have decided.

[18] The Claimant puts forward that the basis of her appeal before the General Division was the Commission's refusal to cancel her regular benefits claim so that she could receive EI-ERB benefits.

[19] On April 20, 2021, the Claimant requested that her regular benefits be replaced with EI-ERB. She did not know that EI-ERB was an option until April 2021.²

[20] The EI Act clearly indicates that an EI-ERB claim can not be made after December 2, 2020. The EI Act does not provide for any derogation.³

[21] Even if I were to decide in appeal that it is possible to cancel or end the established benefit period, the Claimant only presented her request for EI-ERB after the prescribed deadline.

[22] Despite my sympathy for the Claimant, the General Division could not have granted her EI-ERB claim without committing an error of law. The fact that the Claimant considers that the Commission did not adequately inform her can not prevent the application of the EI Act.

[23] 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 me discretion in its application.⁴ Moreover, this case does not raise a statutory interpretation issue, since the language of the legislation is clear and unambiguous.

[24] I understand the Claimant's arguments and frustration regarding the application of this emergency legislation. The fact remains that neither the

² See GD3-78.

³ Section 153.8(2) of the EI Act.

⁴ *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

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

[26] 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

[27] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division