



Citation: *MA v Canada Employment Insurance Commission*, 2021 SST 389

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 23, 2021 GE-21-877

Tribunal member: Melanie Petrunia

Decision date: August 5, 2021

File number: AD-21-228

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, M. A. (Claimant), worked as a teacher, employed in a Long Term Occasional (LTO) assignment during the 2020/2021 school year. She worked from September 1 to December 18, 2020 and returned to the position from January 4 to 12th, 2021. The Claimant applied for benefits during the period from December 20, 2020 to January 1, 2021.

[3] The Canada Employment Insurance Commission (Commission) initially paid the Claimant benefits. It later determined that she was not entitled to benefits because she did not meet any of the conditions required for a teacher to be paid benefits during a non-teaching period. The Claimant requested a reconsideration and the Commission maintained its decision. The Claimant appealed the reconsideration decision to the General Division of the Tribunal.

[4] The General Division found that the Claimant did not experience a clear break in her employment and that her employment was not on a casual or substitute basis. The General Division concluded that the Claimant did not meet any of the exceptions in the Employment Insurance Regulations to allow her to be paid benefits during a non-teaching period.

[5] The General Division also considered the Claimant's position that she should not have to repay the benefits because the Commission did not make its determination until four months after the benefits were received. The General Division found that the Commission was within the time limit allowed by law to review claims.

[6] The Claimant is now asking for leave to appeal the General Division's decision. The Claimant argues that the General Division did not follow procedural fairness and based its decision on an important error of fact.

[7] The Claimant's appeal has no reasonable chance of success. I am refusing leave to appeal.

Issues

[8] The issues are:

- a) Is there an arguable case that the General Division did not follow procedural fairness because the Commission made an error by not putting a disentitlement on her file when it should have?
- b) Is there an arguable case that the General Division based its decision on an important error of fact?

Analysis

[9] The legal test that the Claimant needs to meet on an application for leave to appeal is whether there is any arguable ground on which the appeal might succeed. The threshold for this question is low.

[10] To decide this question, I have to determine whether the General Division could have made one or more of the relevant errors (grounds of appeal).¹ I am only allowed to consider 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 or misapplied the law; and
- d) Based its decision on an important error about the facts of the case.

There is no arguable case that the General Division failed to provide a fair process

[11] In her Notice of Appeal, the Claimant states that the General Division did not follow procedural fairness. She argues that a disentitlement was not placed on her file

¹ The relevant errors, formally known as “grounds of appeal” are listed under section 58(1) of the DESDA (*Department of Employment and Social Development Act*).

when her claim was converted from Employment Insurance Emergency Relief Benefits to regular benefits. She says that she continued to fill out her weekly reports truthfully and accurately, which she was told to do by a Service Canada employee. She states that the error was not her fault and she should not have to repay the benefits.

[12] The argument that the Claimant is making appears to relate to the fairness of the Commission's decision to request repayment of the benefits, and not to any lack of procedural fairness at the hearing before the General Division. I have reviewed the record before the General Division and listened to the hearing. The Claimant raised her concern about the fairness of the Commission's decision at the General Division.² The General Division considered the Claimant's position and found that the Commission was within the time permitted by legislation to review claims. The decision also notes the process for requesting a write-off of the overpayment.³

[13] The General Division considered the Claimant's position regarding the fairness of the Commission requiring that the benefits be repaid. There is no arguable case that the General Division failed to provide a fair process.

There is no arguable case that the General Division based its decision on an important error of fact

[14] The Claimant argues that the General Division disregarded a fact in its decision. She states that the ROE issued by her employer showed that her last day of work was December 18, 2020 and her expected date of recall was January 4, 2021. The ROE states "shortage of work/end of contract or season." She argues that this proves that she was not employed during the period from December 20, 2020 to January 1, 2021.

[15] In its decision, the General Division considered the ROE that the Claimant refers to. The decision specifically notes the last day of work, expected date of recall and the reasons for issuing the ROE.⁴

² General Division decision at paragraph 22.

³ General Division decision at paragraphs 25 to 27.

⁴ General Division decision at paragraph 14.

[16] The General Division took the ROE into consideration in determining whether there was a clear break in the Claimant's employment.⁵ However, this was just one factor to be considered in deciding whether there was a clear break in her employment. The General Division looked at all of the circumstances of the Claimant's employment. It also considered the fact that she was hired to replace a teacher on leave, that she was recalled on January 4th as stated on the ROE, and that there was no interruption in her participation in the group insurance plans.⁶

[17] The General Division correctly raised the question as to whether there had been a clear break in the continuity of the Claimant's employment. The Federal Court of Appeal has repeatedly stated that this is the correct legal test.⁷

[18] The Claimant also states in her Notice of Appeal that she was in a temporary position that does not receive permanent teaching benefits. This argument was also made at the General Division. The General Division looked at the nature of the Claimant's employment and found that it was regular, continuous and pre-determined and that she was not employed on a casual or substitute basis while working in the LTO position.⁸

[19] There is no arguable case that the General Division ignored the Claimant's ROE or based its decision on an important error of fact regarding the temporary nature of her employment.

Conclusion

[20] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division

⁵ General Division decision at paragraph 15.

⁶ General Division decision at paragraph 15.

⁷ *Oliver et al. v Canada (AG)*, 2006 FCA 98; *Stone v. Canada (AG)*, 2006 FCA 27; *Canada (AG) v. Robin*, 2006 FCA 175.

⁸ General Division decision at paragraphs 18-20.