



Citation: *WM v Canada Employment Insurance Commission*, 2021 SST 453

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: W. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 11, 2021
(GE-21-437)

Tribunal member: Pierre Lafontaine

Decision date: August 27, 2021

File number: AD-21-280

Decision

[1] An extension of time to apply for leave to appeal is granted. Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Claimant established a renewal claim for insurance benefits effective November 4, 2018. An investigation revealed that during the benefit period, the claimant was employed from November 19, 2018 to November 29, 2018. The employer reported that the Claimant earned \$782.08 for week commencing November 18, 2018 and \$486.72 for week commencing November 25, 2018. However, the Claimant reported earnings of \$0 for those weeks.

[3] The Commission notified the Claimant that the money received as wages constituted earnings to be allocated from November 18 to December 1, 2018. This allocation resulted in an overpayment. It also concluded that the Claimant made a misrepresentation by knowingly providing false or misleading information when he failed to declare his employment and earnings. The Claimant appealed the Commission's reconsideration decision to the General Division.

[4] The General Division concluded that the Commission correctly allocated the wages to the weeks they were earned. It also concluded that the Claimant knowingly provided false or misleading information and that the Commission correctly imposed a non-monetary penalty.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division made an important error of fact and did not follow procedural fairness.

[6] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[7] I am granting the Claimant an extension of time to apply for leave to appeal but refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUES

[8] Issue 1: Was the application for leave to appeal filed on time?

[9] Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

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.

Issue 1: Was the application for leave to appeal filed on time?

[13] No. The Claimant received the General Division decision on April 12, 2021. The Claimant filed his application for leave to appeal on August 20, 2021. The Claimant explains that he was waiting for a call back from the Commission. He only received a call back on July 21, 2021. After his discussion with the Commission, he filed his appeal within 30 days.

[14] I find that it is in the interest of justice to grant the Claimant an extension of time to apply for leave to appeal. The delay is not excessive, and the extension of time does not prejudice the Commission.¹

Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[15] The Claimant disagrees with the General Division decision. He submits that his mental sickness did impair his answering the question regarding his employment and earnings because this happened when he was still in shock following his dismissal. He also submits that he did not have the chance to see all the documents presented by the Commission.²

[16] In view of the Claimant's grounds of appeal, I listened to the recording of the General Division hearing held on April 7, 2021.

[17] During the hearing, the Claimant acknowledged receiving the documents prior to the hearing. I note that on March 24, 2021, the Claimant did in fact receive the documents at his email address provided in his notice of appeal to the General Division. Furthermore, the Claimant did not request more time from

¹ *X (Re)*, 2014 FCA 249; *Grewal v Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

² GD3 and GD4.

the General Division to read the documents but rather declared himself ready to proceed. Therefore, I am of the view that this ground of appeal does not have a reasonable chance of success.

[18] The General Division had to decide whether the amounts received by the Claimant were earnings and if so, whether the Commission correctly allocated them.

[19] Before the General Division, the Claimant agreed in part that the sum of \$782.08 is earnings because he was paid wages for working at a warehouse. However, he did not agree that the remaining amount of \$486.72 is earnings because it was a fine paid by the employer for wrongfully dismissing him.

[20] The General Division found that the Claimant received total earnings of \$1,268.80, as shown on the record of employment.³ It was not persuaded that the employer had to pay a fine of \$486.72 because there was no supporting evidence to show that there had been a claim, settlement or order involving the employer and the Ministry of Labour.

[21] The Claimant also initially agreed with the amounts submitted by the employer and declared that they were gross earnings.⁴

[22] The burden of proof for disputing the employer's pay information rests with the Claimant.⁵

[23] It is not sufficient for a claimant to raise a doubt on the veracity of the employer's evidence. He or she must provide countering evidence before the General Division, which the Claimant has not done. In light of the evidence before it, the General Division simply could not arrive at a different conclusion from the one at which it did arrive.⁶

³ See GD3-11.

⁴ See GD3-24.

⁵ *Dery v Canada (Attorney General)*, 2008 FCA 291.

⁶ *Idem*.

[24] The General Division also had to decide whether the Claimant knowingly provided false or misleading information on his claim report and if so, whether the Commission properly decided to impose a non-monetary penalty.

[25] Before the General Division, the Claimant stated that he did not knowingly provide false or misleading information because he was dealing with mental health issues and was still in shock following his dismissal.

[26] The only requirement of Parliament for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading statement. As stated by the General Division, the absence of the intent to defraud is of no relevance.

[27] While it acknowledged that the Claimant may have been experiencing mental health related issues and under shock following his dismissal, the General Division was not persuaded that it impaired his ability to answer the clear and simple questions he was asked. The Claimant also did not file any supportive medical evidence. The General Division concluded from the evidence that the Commission correctly imposed a penalty because the Claimant knew that he had performed paid work during the weeks covered by the reports he completed.

[28] I find that the General Division stated the relevant legal test correctly. It applied that test to the facts the Claimant raised, and it considered whether, having regard to all the circumstances, the Claimant had knowingly made false or misleading statements.

[29] The Claimant, in his leave to appeal application, would essentially like to represent his case to obtain a different outcome. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can re-present evidence and hope for a new favorable outcome.

[30] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[31] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

CONCLUSION

[32] An extension of time to apply for leave to appeal is granted. Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division