



Citation: *UT v Canada Employment Insurance Commission*, 2021 SST 458

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: U. T.
Representative: P. T.

Respondent: Canada Employment Insurance Commission
Representative: Josee Lachance

Decision under appeal: General Division decision dated February 8, 2021
(GE-21-32)

Tribunal member: Melanie Petrunia

Type of hearing: On the Record

Decision date: August 31, 2021

File number: AD-21-118

Decision

[1] The appeal is dismissed. The General Division did not make an error by summarily dismissing the Claimant's appeal.

Overview

[2] The Appellant, U. T. (Claimant), applied for Employment Insurance (EI) sickness benefits on July 4, 2020. Her claim was established as Employment Insurance Emergency Response Benefit (EI ERB) with a benefit rate of \$500. The Claimant requested a reconsideration of this decision because she did not agree with the type of benefits or the rate. The Commission maintained its decision and the Claimant appealed to the General Division of the Tribunal.

[3] The General Division summarily dismissed the Claimant's appeal. This means that the General Division found that the Claimant's appeal had no reasonable chance of success and dismissed it without a hearing.

[4] As a result of the COVID-19 pandemic, amendments were made to the Employment Insurance Act (EI Act) which included the creation of the EI ERB. All claims that could be established between March 15, 2020 and October 3, 2020 were established as EI ERB claims. The amount payable for these claims was \$500 per week.

[5] I must decide whether the General Division made an error that would justify allowing the appeal. The Claimant has not proven that the General Division made an error. I dismiss the appeal.

Preliminary matters

[6] The appeal was scheduled to be heard on July 15, 2021. Neither party attended the hearing. The Claimant's representative wrote to the Tribunal stating that they wanted an in-person hearing. The Claimant's representative was told that the Tribunal was not able to offer an in-person hearing at this time. He was asked if the Claimant

would like to proceed by teleconference, videoconference or put the matter in abeyance until an in-person hearing could be offered.¹

[7] The Claimant's representative did not reply by the deadline and had not replied as of the date of this decision. I stated that I would make my decision based on the record if there was no reply. I am satisfied that the Claimant received the letter from the Tribunal and had an opportunity to make submissions.

Issue

[8] Did the General Division make an error by summarily dismissing the Claimant's appeal?

Analysis

[9] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.² The question that the Tribunal must ask is whether it is plain and obvious on the record that the appeal is bound to fail.³ It must decide whether the failure is pre-ordained no matter what evidence or arguments the Claimant submits at the hearing.

[10] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, the Appeal Division reviews the General Division's decision to decide if it contains errors. That review is based on the wording of the DESDA, which sets out the errors (or grounds of appeal) that the Appeal Division can address.⁴ The DESDA describes three types of errors that the Appeal Division can address: errors of fact, errors of law, and errors made because the General Division failed to provide a fair process (or decided something it did not have the power to decide).⁵

¹ AD05, Letter to Claimant dated July 27, 2021

² DESDA, s 53(1); see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

³ *J. S. v Canada Employment Insurance Commission*, 2015 SSTAD 1132; *C. D. v Canada Employment Insurance Commission*, 2015 SSTAD 594.

⁴ The Federal Court of Appeal explained this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁵ DESDA, s 58(1).

– **The General Division did not err by summarily dismissing the appeal**

[11] As a result of the COVID-19 pandemic, there were changes made to the EI Act. One of these changes was the creation of the EI ERB. Amendments to the EI Act say that all claims that could be established for regular or sickness benefits between March 15, 2020 and October 3, 2020, were established as EI ERB claims.⁶

[12] The Claimant applied for sickness benefits on July 4, 2020. Her claim was established effective June 14, 2020. Because this date falls between March 15 and October 3, 2020, it was established as EI ERB. The amount payable to claimants under the EI ERB is \$500 per week.⁷

[13] The General Division wrote to the Claimant saying that it planned to summarily dismiss the Claimant's appeal and explaining why it did not think that the appeal has a reasonable chance of success. The Claimant made submissions stating that she does not agree with decisions made by the Prime Minister and that the Tribunal's position that her appeal did not have a reasonable chance of success was biased against hardworking Canadians. The General Division was satisfied that the Claimant's arguments did not have a reasonable chance of success and summarily dismissed the appeal.

[14] The Claimant argues that she is still waiting for her hearing and that she has many questions. She stated that she was not interested in the opinion of the Tribunal and she has good arguments but she did not explain what those arguments are.⁸

[15] In my view, the General Division did not make an error by summarily dismissing the Claimant's appeal. The Claimant's appeal was bound to fail regardless of what she argued at the General Division. With the amendments to the EI Act, her claim was properly established as EI ERB. The General Division applied the law as written. It

⁶ EI Act at para 153.5(2)(b)

⁷ EI Act at subsection 153.10(1)

⁸ AD01, Notice of Appeal

properly found that it has no discretion to step outside the law. The General Division did not ignore or misunderstand the evidence.

Conclusion

[16] The appeal is dismissed.

Melanie Petrunia
Member, Appeal Division