Citation: *YL v Canada Employment Insurance Commission*, 2021 SST 526

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	Y. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated August 17, 2021 (GE-21-1305)

Tribunal member:	Melanie Petrunia
Decision date:	September 28, 2021
File number:	AD-21-283

Decision

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

Overview

[2] The Applicant (Claimant) was laid off from her employment due to a shortage of work. Her last paid day was June 19, 2019. She applied for regular employment insurance (EI) benefits and initial benefit period was established effective June 23, 2019. The Claimant was entitled to 38 weeks of EI benefits because of the unemployment rate where she lives and the hours of insurable employment she accumulated in her qualifying period.

[3] The Claimant received money from her employer for severance, vacation and payment in lieu of notice (separation monies). The Claimant's benefit period was extended to 104 weeks, the maximum extension available under the *Employment Insurance Act* (EI Act).

[4] The Claimant's benefit period ended on June 19, 2021. The Canada Employment Insurance Commission (Commission) allocated the separation monies as required by the EI Act. The allocation went to July 3, 2021. Because the allocation went beyond the end of the benefit period, the Claimant was not paid any EI benefits.

[5] The Claimant appealed this decision to the Tribunal's General Division. Her claim was dismissed. She now seeks leave to appeal the General Division decision to the Appeal Division. She argues that she is being denied benefits because of a 2-year holding period. She says that this is put in place so that claims do not sit forever but that her case is different. She says that she had no choice and her claim is not old.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error upon which the appeal might succeed?

Analysis

[8] The *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision.[1] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;[2] or

d) made an error in law.[3]

[9] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[10] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

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[1] DESD Act, s 58(2).
[2] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.
[3] This paraphrases the grounds of appeal.

[11] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[4]

Does the Claimant raise some reviewable error upon which the appeal might succeed?

[12] In her application for leave to appeal, the Claimant states that her claim is being cancelled because of a holding period that EI uses. She argues that the government says that a company can give an employee up to 2 years severance but doesn't say anything about the holding period. The Claimant argues that people who receive severance don't know about this holding period. She also states that the holding period was put in place to prevent claims from sitting forever, but that her case is not like that.

[13] The Claimant also argues that she has been paying into the EI system for many years and never received benefits. She needs assistance and help from her government.

[14] The holding period that the Claimant refers to is the maximum benefit period extension under the *Act*. The benefit period is typically 52 weeks long and starts either when the initial claim for benefits is made, or when the interruption of earnings occurs.[5] This period can be extended in certain circumstances, such as when a Claimant receives money because of the severance of their employment relationship.[6]

[15] The General Division properly cited subsection 10(14) of the EI Act which states that the benefit period cannot be extended to more than 104 weeks. A Claimant can only receive payment of benefits that they are entitled to during a benefit period. This means that, when the Claimant's separation monies were allocated to July 3, 2021, her benefit period had ended and no benefits could be paid.

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[4] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[5] EI Act, ss. 10(1) and 10(2).
[6] EI Act, para.10(10)(b).

[16] The General Division properly applied the law. It also considered the Claimant's arguments that she disagreed with the requirements of the Act and felt she should be entitled to benefits because she had paid in to the system for so long. The General Division properly found that the Tribunal does not have the discretion to ignore clear statutory provisions of the EI Act. The Tribunal must apply the statutory requirements and cannot ignore the Act on the basis of fairness or compassion.[7]

[17] The Claimant did not specify a particular ground of appeal. The Claimant is restating the same arguments as at the General Division and asking for the Appeal Division to re-weigh the evidence and come to a different conclusion. I have found that there is no arguable case that the General Division based its decision on an important error of fact and I cannot re-weigh the evidence.[8] I am not satisfied that the appeal has a reasonable chance of success.

[18] I have also considered other grounds of appeal. After reviewing the record and listening to the hearing before the General Division, I have not identified any errors of law or jurisdiction. There is no arguable case that the General Division failed to provide a fair process.

Conclusion

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

Melanie Petrunia
Member, Appeal Division

[7] *Canada (Attorney General) v. Knee*, 2011 FCA 301).
[8] *Rouleau v. Canada (Attorney General)*, 2017 FC 534, at para 42.