



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2021 SST 656

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
September 15, 2021 (GE-21-1276)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** November 5, 2021

**File number:** AD-21-342

## Decision

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

## Overview

[2] The Applicant (Claimant) works as a maintenance team leader. Because of the pandemic, his hours were reduced to 30 hours a week. On March 29, 2021, he made a claim for Employment Insurance (EI) benefits. He asked that it be considered as having been made on May 3, 2020. He also applied for the EI Emergency Response Benefit. The Commission denied the Claimant's claims on reconsideration. He appealed to the General Division.

[3] The General Division determined that an interruption of earnings is an essential condition to qualify for benefits. It found that, as a result, the Claimant's antedate request could not be allowed. The General Division also determined that the Claimant had applied for emergency benefits on March 29, 2021, when the deadline was December 2, 2020. It found that the Claimant could not receive emergency benefits.

[4] The Claimant now seeks leave to appeal the General Division's decision. He argues that he did not know there was a deadline but feels he is entitled to benefits. He finds that he is being treated unfairly, since co-workers in the same situation have received benefits.

[5] In a letter, I asked the Claimant to explain in detail why he was appealing. The Claimant reiterated that he considered himself a victim of injustice and that he wanted to see justice done in his case.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## Issue

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

## 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

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

[12] In support of his application for leave to appeal, the Claimant argues that he did not know there was a deadline but nevertheless feels that he is entitled to benefits. He

finds that he is being treated unfairly, since co-workers in the same situation have received benefits.

[13] The General Division determined that an interruption of earnings is an essential condition to qualify for benefits. It found that, as a result, the Claimant's antedate request could not be allowed. The General Division also determined that the Claimant had applied for emergency benefits on March 29, 2021, when the deadline was December 2, 2020. It found that the Claimant could not receive emergency benefits.

[14] An antedate request can be allowed if the claimant qualified for benefits on the earlier day and had good cause for the delay during the entire period of the delay.<sup>1</sup>

[15] The evidence shows that the Claimant never stopped working between May 5, 2019, and May 3, 2020. This means that he did not have an interruption of earnings for seven days. As the General Division pointed out, this is an essential condition to receive benefits.<sup>2</sup> So, the General Division could not allow the Claimant's antedate request.

[16] To be eligible for the EI Emergency Response Benefit, you have to meet certain conditions. You need to have applied before December 2, 2020. The Claimant applied on March 29, 2021. The law clearly states that a claim for emergency benefits must not be made after December 2, 2020.<sup>3</sup> In addition, the Claimant did not stop working or stop receiving income from employment.<sup>4</sup>

[17] Unfortunately for the Claimant, the Federal Court of Appeal has held that the requirements of the law do not allow any discrepancy and provide the Tribunal with no discretion in its application.<sup>5</sup>

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<sup>1</sup> See section 10(4) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See section 7(2) of the EI Act and section 14 of the *Employment Insurance Regulations*.

<sup>3</sup> See section 153.8(2) of the EI Act.

<sup>4</sup> See section 153.9(1)(a) of the EI Act.

<sup>5</sup> *Canada (Attorney General) v Levesque*, 2001 FCA 304; and *Pannu v Canada (Attorney General)*, 2004 FCA 90.

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

[19] After reviewing the appeal file, the General Division decision, and the Applicant's 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**

[20] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division