



Citation: *EC v Canada Employment Insurance Commission*, 2021 SST 678

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. C.
Representative: Pauline Clarke

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 28, 2021
(GE-21-1800)

Tribunal member: Shirley Netten

Decision date: November 16, 2021
File number: AD-21-364

Decision

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

Overview

[2] E. C. (the Claimant) applied for regular employment insurance (EI) benefits in June 2020. Service Canada¹ processed this as a claim for emergency response benefits (EI ERB). Then, in October 2020, Service Canada automated his application for regular EI benefits. The Claimant was granted 50 weeks of regular EI benefits.

[3] In July 2021, the Claimant asked to start a new claim for regular EI benefits. Service Canada determined that he did not have enough insurable hours for a new claim, and so the October 2020 claim continued.

[4] The Claimant asked Service Canada to reconsider, because he wanted his insurable hours from May to October 2020 to be used for the July 2021 claim. Service Canada did not change its decision. And, under appeal, the General Division agreed with Service Canada.

[5] The Claimant now asks for permission to appeal to the Appeal Division.

Issue

[6] Is there an arguable case that the General Division made an error of law, when it decided that the June 2020 claim was for the EI ERB and not regular EI benefits?

Analysis

[7] The Appeal Division must grant permission to appeal unless the appeal “has no reasonable chance of success.”² A reasonable chance of success means having some arguable ground upon which the proposed appeal might succeed.³ One of the grounds of appeal to the Appeal Division is that the General Division made an error of law.⁴

¹ On behalf of the Canada Employment Insurance Commission

² *Department of Employment and Social Development Act*, sections 58(2) and 58(3)

³ See, for example, *Osaj v. Canada (Attorney General)*, 2016 FC 115.

⁴ *Department of Employment and Social Development Act*, section 58(1)(b)

There is no arguable case that the General Division erred in law

[8] The Claimant says that the General Division made an error of law. Specifically, the Claimant says that Service Canada should have processed his June 2020 claim as a claim for regular EI benefits, based on his insurable hours in 2019. This would have given him 42 weeks of EI. Then he would gotten another 42 weeks of EI on a new claim, based on his insurable hours in 2020.

[9] In other words, the Claimant has ended up with fewer total weeks of EI than he might have had otherwise, if not for the EI ERB and the associated delay in his regular EI benefits.

[10] Even if this is true, it doesn't point to an error by the General Division.

[11] The law doesn't give Service Canada any choice in this matter. The *Employment Insurance Act* (Act) says that a claim for regular EI benefits made after March 15, 2020 is **deemed to be** a claim for the EI ERB.⁵ The Act also says that **no benefit period** can be established for regular EI benefits between March 15 and September 26, 2020.⁶ So, there is no arguable case that the General Division made a legal error when it found that the June 2020 claim was a claim for the EI ERB. Service Canada could not have processed the June 2020 claim any other way.

There are no other grounds of appeal

[12] The Claimant has not disputed any other part of the General Division decision, and I see no potential errors. After the EI ERB, the earliest that Service Canada could establish the Claimant's benefit period for regular EI benefits was October 4, 2020.⁷ The qualifying period for the July 2021 claim could not reach further back than the start of the previous benefit period (October 4, 2020).⁸ It was undisputed that the Claimant did not have the minimum 420 insurable hours during the qualifying period from October

⁵ *Employment Insurance Act*, section 153.1310

⁶ *Employment Insurance Act*, sections 153.8(5), 153.5(3)(a)

⁷ *Employment Insurance Act*, sections 153.8(5) (no benefit period allowed March 15 to September 26, 2020) and 153.8(6) (no benefit period allowed September 27 to October 3, 2020, in the Claimant's circumstances)

⁸ *Employment Insurance Act*, section 8(1)

2020 to July 2021. That is why he could not qualify for benefits under a new claim in July 2021.

Conclusion

[13] There is no arguable ground upon which the Claimant's appeal might succeed, and no reasonable chance of success. Permission to appeal is refused.

Shirley Netten
Member, Appeal Division