



Citation: *KA v Canada Employment Insurance Commission*, 2021 SST 726

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 28, 2021
(GE-21-1767)

Tribunal member: Melanie Petrunia

Decision date: December 5, 2021

File number: AD-21-362

Decision

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

Overview

[2] The Applicant, K. A. (Claimant), was receiving regular employment insurance (EI) benefits. A benefit period was established effective February 18, 2018. The Respondent, the Canada Employment Insurance Commission (Commission), discovered that the Claimant was working at a full-time internship from June 4 to November 30, 2018.

[3] For the week of June 10, 2018, the Claimant reported earnings of \$125. For the weeks of June 3, June 17, June 24 and July 1, 2018, the Claimant reported that he was not working and did not have any earnings. The Claimant's employer reported that he had earnings of \$577 for each of these weeks.

[4] The Commission decided that the money the Claimant received were earnings and it allocated the earnings to the weeks from June 3 to July 7, 2018. This resulted in an overpayment. The Commission also imposed a non-monetary penalty of a warning letter.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant received earnings that were properly allocated. It also found that the Commission proved that the Claimant knowingly provided false or misleading information and exercised its discretion properly when it imposed the penalty.

[6] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. He says that the General Division didn't follow procedural fairness and made an important error of fact.

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

Issue

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

Analysis

[9] 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

[10] 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 his case and possibly win.

[11] 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.

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.

[12] 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?

[13] In his application for leave to appeal, the Claimant states that he thought someone would listen to his facts carefully. He argues that the General Division member ignored facts he raised during the hearing and says that there is no one to listen carefully and unbiased.

[14] The Claimant makes three main points in his application for leave to appeal:

- a) He says that the law allows a violation to be issued within 72 months but he cannot recall all of the details from that long ago to defend himself.
- b) He called Service Canada on June 15, 2018 to request advice and expertise.
- c) He told the General Division member that it was his first experience having an overlap with benefits and an internship. He didn't know what to do and contacted Service Canada for details.⁵

[15] At the hearing before the General Division, the Claimant testified that agreed with the amounts that his employer says he was paid.⁶ The issues raised in the Claimant's application for leave to appeal do not seem to relate to the issue of allocation. There is nothing in the application for leave to appeal to suggest that the General Division made an error when it decided that the money the Claimant received was earnings and that it was properly allocated. I have not found any errors in the General Division's decision on this issue.

⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁵ AD1-4.

⁶ Recording of Hearing at 19:32.

[16] The arguments in the application for leave to appeal relate to the issue of whether or not the Commission proved that the Claimant knowingly provided false or misleading information and exercised its discretion properly when it imposed the penalty.

[17] In its decision, the General Division summarized the Claimant's arguments on this issue. It notes that the Claimant said he did not have a contract or any information he was going to be paid when he started the internship. He received a contract a few days into the internship. He did not know who would be paying him. The company that got him the internship emailed him on June 13, 2018 to say that he needed to sign up for an online payroll system to see his paycheque.⁷

[18] The Claimant testified that he was not paid until June 15, 2018 and that he contacted the Commission on this day. He asked for advice on how to complete his claimant reports. The Claimant said that he followed the advice that he received. He said that he never intended to report incorrect information. He claimed that it was the Commission's fault that he received the wrong information and that it didn't make sense to call the Commission for help and then fill out the reports wrong.⁸

[19] The Claimant also testified that he was not able to defend himself because these events took place so long ago. The General Division considered this argument.⁹

[20] The General Division took the points that the Claimant makes in his application for leave to appeal into consideration in making its decision. It decided to give little weight to the Claimant's testimony that he called the Commission for advice. It found that the fact that the Claimant filed reports during the period differently contradicted his testimony. It found that the questions on the reports are clear and simple and decided that the Commission proved it was more likely than not that the Claimant knowingly provided false or misleading information.¹⁰

⁷ General Division decision at paras 42 to 45.

⁸ General Division decision at paras 46 to 52.

⁹ General Division decision at paras 53, 70 and 72.

¹⁰ General Division decision at para 58.

[21] The General Division also considered these arguments when deciding if the Commission exercised its discretion properly when issuing the warning letter. It noted that the arguments of the Claimant were all considered by the Commission in making its decision. The General Division also found that the Commission did not consider an irrelevant factor or ignore any relevant factors.¹¹

[22] I have reviewed the file and listened to the hearing before the General Division. I have not found that the General Division failed to provide a fair process. The General Division considered the Claimant's arguments and there is no evidence that it was biased. The General Division did not ignore or misunderstand any evidence.

[23] 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.¹² I am not satisfied that the appeal has a reasonable chance of success.

[24] I have also considered other grounds not raised by the Claimant. After reviewing the record and listening to the hearing before the General Division, I have not identified any errors of law or jurisdiction.

Conclusion

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

Melanie Petrunia
Member, Appeal Division

¹¹ General Division decision at para 71.

¹² *Rouleau v. Canada (Attorney General)*, 2017 FC 534, at para 42.