



Citation: *DS v Canada Employment Insurance Commission*, 2021 SST 788

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. S.
Representative: Cheryl Atkinson
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 13, 2021
(GE-21-1703)

Tribunal member: Pierre Lafontaine
Decision date: December 24, 2021
File number: AD-21-397

Decision

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

Overview

[2] The Applicant (Claimant) applied for fishing benefits on September 22, 2020. He had worked fishing from November 27, 2019 to January 23, 2020. The Respondent (Commission) established a claim for summer fishing benefits on September 29, 2020. They paid him 26 weeks of summer fishing benefits.

[3] The Claimant again applied for fishing benefits on May 6, 2021. He did so using the same period of fishing from November 27, 2019 to January 23, 2020. The Commission determined that they had paid the Claimant summer fishing benefits in error. This resulted in an overpayment. The Commission then established a claim for winter fishing benefits on March 28, 2021.

[4] Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the Claimant was not entitled to summer fishing benefits. It concluded that the Commission had correctly cancelled the claim for summer fishing benefits starting on September 27, 2020. The General Division also concluded that it did not have the authority to write-off the Claimant's overpayment.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division did not properly consider the impact of not being able to apply for the Canada Recovery Benefits because of the Commission's error. The Claimant requests that the Commission be instructed to reconsider its refusal to write-off the overpayment.

[7] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[10] 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.

[11] 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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

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

[13] In support of his application for leave to appeal, the Claimant submits that the General Division did not properly consider the financial impact of not being able to apply for the Canada Recovery Benefits because of the Commission's error. The Claimant requests that the Commission be instructed to reconsider its refusal to write-off the overpayment.

[14] During the General Division hearing, the Claimant confirmed that he did not have earnings from the 2020 summer fishing season. He agreed that he did not have earnings to establish a summer fishing claim. He also confirmed that he received summer fishing benefits from September 27, 2020 to March 21, 2021.

[15] Based on this evidence, the General Division found that the Claimant was not entitled to summer fishing benefits. It concluded that the Commission had correctly cancelled the claim for summer fishing benefits starting on September 27, 2020. The General Division also concluded that it did not have the authority to write-off the Claimant's overpayment.

[16] It is well established that claimants who receive money to which they are not entitled, **even as a result of a mistake by the Commission**, are not excused from having to repay it.¹

[17] Furthermore, the General Division correctly determined that the Tribunal has no authority to grant a write-off. The law clearly states that a claimant cannot appeal such a decision before the Tribunal.² Only the Federal Court of Canada has the jurisdiction to hear such an appeal following a formal refusal by the Commission to write-off the overpayment.³

¹ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

² See sections 112, 112.1 and 113 of the *Employment Insurance Act*.

³ *CB v Canada Employment Insurance Commission*, 2020 SST 226; *BP v Canada Employment Insurance Commission*, 2019 SST 124.

[18] I understand the financial impact for the Claimant since he can no longer apply for the Canada Recovery Benefits following the Commission's error. Unfortunately, for the Claimant, I do not have jurisdiction to order compensation for any damages he suffered. It is an issue that must be debated in another forum.⁴

[19] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of his request 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. This means the appeal will not proceed.

[21] I recommend that the Commission formally respond to the Claimant's request for write-off within 30 days after this decision, if it has not already done so.

[22] Should the Commission refuse to allow the write-off, the Claimant could turn to the Federal Court, which has exclusive jurisdiction to hear an appeal on the issue of a write-off.

Pierre Lafontaine
Member, Appeal Division

⁴ *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.