



Citation: *FT v Canada Employment Insurance Commission*, 2022 SST 16

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: F. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 8, 2021
(GE-21-1698)

Tribunal member: Janet Lew

Decision date: January 12, 2022

File number: AD-21-450

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

Overview

[2] The Applicant, F. T. (Claimant), is appealing the General Division decision. The General Division found that the Claimant was not entitled to receive the Employment Insurance fishing benefits that he had received for the period from March 28, 2021 to May 15, 2021. The General Division found that he had to repay these benefits.

[3] The Claimant does not challenge the General Division's findings that he did not qualify for fishing benefits from March 28 to May 15, 2021. However, he says that he should not have to repay them. He says the Respondent, the Canada Employment Insurance Commission (Commission) (via Service Canada), encouraged him to apply for the benefits. The Commission told him that he qualified for an extension of benefits. The Claimant also questions why the Commission paid him any fishing benefits at all, if he was not entitled to receive them in the first place.

[4] I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.²

Issue

[5] Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or certain type of factual errors?

¹ Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I have to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Analysis

[6] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.³

[7] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error and, if so, how to fix that error.

Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors?

[8] The Claimant has not identified any grounds of appeal.

[9] There is no issue over the fairness of the General Division hearing. The Claimant does not say that the Commission overstepped its authority, or that it failed to exercise its jurisdiction.

[10] The Claimant does not dispute the General Division's findings of fact, or its interpretation or application of the *Employment Insurance (Fishing) Regulations* (Fishing Regulations) or Part VIII.5 of the *Employment Insurance Act*, the Temporary Measures to Facilitate Access to Benefits.

[11] The temporary measures are in response to the pandemic. Claimants who do not qualify for fishing benefits under the Fishing Regulations may qualify for benefits under the temporary measures.

[12] The General Division did not misinterpret or misapply the Fishing Regulations or the temporary measures when it looked at whether the Claimant was entitled to receive fishing benefits for the period between March 28, 2021 and May 15, 2021.

³ See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that has been made in a perverse or capricious manner, or without regard for the evidence before it.

Fishing benefits under the *Employment Insurance (Fishing) Regulations*

[13] The Claimant did not qualify for fishing benefits under the Fishing Regulations. The General Division explained that, to qualify for fishing benefits under the Fishing Regulations, a claimant:

- must not qualify for regular benefits and
- must have earned a certain level of insurable earnings. In the Claimant's case, he had to have earned at least \$2,500 since the beginning of his qualifying period.⁴

[14] The Claimant applied for a winter fishing claim.⁵ He wanted his winter fishing claim established the week starting on Sunday, March 28, 2021. The application form explained that a winter fishing claim meant that he fished during the winter months and claimed benefits during the summer months. These claims start as early as the Sunday of the week of April 1 and end no later than Saturday of the week of December 15.

[15] For a winter fishing claim, the qualifying period begins on the latest of:

- (i) the Sunday of the week in which the September 1 preceding the week in which the fisher makes the initial claim for benefit falls,
- (ii) the Sunday of the week in which the fisher's last benefit period began, and
- (iii) the Sunday of the 31st week preceding the week in which the fisher makes the initial claim for benefits.⁶

[16] The General Division did not say when the qualifying period began. The Commission noted however that the Claimant did not have any employment between

⁴ For winter claims, see section 8(7)(b) of the Fishing Regulations. The section requires a fisher to prove that they have accumulated at least \$2,500 of insurable earnings from employment as a fisher since the beginning of the qualifying period.

⁵ See Claimant's application, at GD3-25.

⁶ See section 9(a) of the Fishing Regulations.

September 27, 2020 and March 26, 2021. And, the evidence shows that the Claimant did not have any earnings from fishing since mid-July 2020.

[17] The Claimant did not dispute that he did not have any earnings from fishing. It is clear that the Claimant did not have any earnings since the beginning of his qualifying period. As a result, the Claimant could not get benefits under the Fishing Regulations.

[18] Because the Claimant did not qualify for benefits under the Fishing Regulations, the General Division looked at whether he qualified for fishing benefits under the temporary measures.

Fishing benefits under the temporary measures

Winter fishing claim

[19] As the General Division explained, to qualify for fishing benefits under the temporary measures, a claimant had to have received benefits in the previous seasons.⁷ In particular, if they are claiming benefits for a winter fishing claim, then they had to have received benefits during the summer months in previous seasons.⁸

[20] The General Division found that the Claimant had never made a winter fishing claim before.⁹ There was no evidence that he had received benefits during the summer months in previous seasons. Because he had not made a winter fishing claim before, he did not establish any benefit periods for a winter fishing claim in either 2020 or 2019. This meant he could not get benefits for a winter fishing claim under the temporary measures.

Summer fishing claim

⁷ See sections 153.1922 and 153.1923(1)b) under Part VIII.5 of the Temporary Measures to Facilitate Access to Benefits, of the *Employment Insurance Act*.

⁸ These periods are defined by section 153.1923(1)(b) of the *Employment Insurance Act*. These periods (i) begin on March 29, 2020, and end on December 19, 2020, and (ii) begin on March 31, 2019 and end on December 21, 2019.

⁹ See General Division, at para 20.

[21] The General Division also looked at whether the Claimant qualified for a summer fishing claim. This was unnecessary because the Claimant was applying for a winter fishing claim.

[22] Overall, I am not satisfied that there is an arguable case that the General Division misinterpreted or misapplied the Fishing Regulations or the temporary measures of the *Employment Insurance Act*.

Overpayment

[23] The Claimant says that the overpayment should be waived or written off because he is not responsible for any errors that led to the overpayment. It is clear that the Claimant has acted in good faith throughout. He is in no way responsible for the overpayment. He relied on the Commission's advice. The Commission led him to believe that he was entitled to an extension of benefits

[24] At the General Division, the Commission acknowledged that it made a mistake. It acknowledged that it should not have paid his second claim. However, the Commission argued that the fact remains that the Claimant received benefits that he should not have received.¹⁰

[25] The General Division concluded that, despite the Commission's error, the Claimant still had to repay the benefits. The General Division correctly noted that it did not have the authority to write off any overpayments. The General Division properly described the scope of its powers.

[26] The Appeal Division also does not have any power to write off any overpayments.

¹⁰ See Representations of the Commission to the Social Security Tribunal – Employment Insurance section, filed September 23, 2021, at GD4-5.

The Claimant's options

[27] The General Division noted that section 56 of the *Employment Insurance Regulations* lets the Commission write-off the overpayment. Certain conditions have to exist.

[28] The Claimant has two options:

1. He can ask the Commission to consider writing off the debt because of undue hardship.¹¹ If the Claimant does not like the Commission's response, his option then is to appeal to the Federal Court; or
2. He can contact the Debt Management Call Centre at 1-866-864-5823 about a repayment schedule.

Conclusion

[29] As there are no grounds of appeal, permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

¹¹ See section 56 of the *Employment Insurance Regulations*.