



Citation: *DD v Canada Employment Insurance Commission*, 2022 SST 13

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 6, 2021
(GE-21-1755)

Tribunal member: Janet Lew

Decision date: January 12, 2022

File number: AD-21-443

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, D. D. (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 fishing claim. He indicated on his application form that he had last worked on July 11, 2020.⁵ Records of employment also showed that he last worked in July 2020.⁶

[15] The General Division noted that the Claimant's claim for fishing benefits was from March 28, 2021. For that reason, it explained only the qualifying period for a winter claim.

[16] As the General Division explained, 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.⁷

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 GD3-27 and GD3-28.

⁶ See Records of Employment, at GD3-19 and GD3-21.

⁷ See section 9(a) of the Fishing Regulations.

[17] The General Division explained how it decided the beginning of the Claimant's qualifying period.⁸ The General Division decided that the qualifying period began on September 27, 2020.

[18] The Claimant did not have any earnings from fishing since September 27, 2020, the beginning of the qualifying period. As a result, he could not get benefits under the Fishing Regulations.

[19] 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

[20] 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.⁹ 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.¹⁰

[21] The General Division found that the Claimant had never made a winter fishing claim before.¹¹ There was no evidence that he had established a winter benefit period beginning on March 29, 2020 and ending on December 19, 2020, or a winter benefit period beginning on March 31, 2019 and ending on December 21, 2019. It found that his benefit periods were for the alternate season.

[22] Because the Claimant 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

⁸ See General Division decision, at para 22.

⁹ 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*.

¹⁰ 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.

¹¹ See General Division, at para 41.

meant he could not get benefits for a winter fishing claim under the temporary measures.

[23] 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

[24] 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

[25] 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.¹²

[26] 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.

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

The Claimant's options

[28] The General Division noted that section 56 of the *Employment Insurance Regulations* lets the Commission write-off the overpayment, if certain conditions, such as "undue hardship," exist. The General Division noted that the Claimant testified that

¹² See Representations of the Commission to the Social Security Tribunal – Employment Insurance section, filed October 6, 2021, at GD4-5.

the overpayment was a lot of money to have to repay. It is putting him in a difficult financial situation. He described it as devastating. He is the sole income earner in his family. His disabled wife and adult son are dependent on him.

[29] The Claimant has two options:

1. He can ask the Commission to consider writing off the debt because of undue hardship.¹³ 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

[30] 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

¹³ See section 56 of the *Employment Insurance Regulations*.