



Citation: *AC v Canada Employment Insurance Commission*, 2022 SST 23

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 25, 2021
(GE-21-1853)

Tribunal member: Janet Lew

Decision date: January 18, 2022

File number: AD-22-5

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, A. C. (Claimant), is trying to appeal the General Division decision. He has to get permission from the Appeal Division before he can move ahead with his appeal.

[3] The General Division found that the Respondent, the Canada Employment Insurance Commission (Commission), proved that the Claimant could not return to work because there was a work stoppage. It also found that the Commission proved that the work stoppage was because of a labour dispute. For that reason, the General Division decided that the Claimant was not entitled to receive Employment Insurance benefits.

[4] The Claimant agrees that “he is not disputing the validity of the law”¹ and that “[Employment Insurance benefits] cannot be paid during a labour dispute.”² He also does not challenge the General Division’s findings of fact.

[5] However, the Claimant argues that the General Division should have held off on deciding his appeal until it received answers from the Commission.³ One of his questions was why some of his co-workers got Employment Insurance benefits, and others did not, even though they were all involved in the same labour dispute.

[6] The Claimant says getting answers to his questions was “paramount to [his] appeal”.⁴ He says the General Division should have had the power to make a decision “based on the specific facts of [his] case regarding inequity with [his] co-workers.”⁵ He

¹ General Division decision, at para 12.

² General Division decision, at para 12.

³ The Claimant asked the Commission several questions. But, he did not get any answers from the Commission. The Claimant’s list of questions is at GD6-2.

⁴ See Claimant’s application to the Appeal Division, at AD1-5.

⁵ See Claimant’s application to the Appeal Division, at AD1-5.

rejects the member's decision that it could not compel the Commission to produce answers to his questions. He says that the process was neither fair nor equitable.

[7] I have to decide whether the appeal has a reasonable chance of success.⁶ Having a reasonable chance of success is the same thing as having an arguable case.⁷

[8] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am refusing to give the Claimant permission for him to move ahead with his appeal.

Issue

[9] Is there an arguable case that the General Division failed to have the Commission answer the Claimant's questions?

Analysis

[10] The Appeal Division must grant permission to an applicant to move ahead with their 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.⁸

[11] 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. If it decides that the General Division made an error, then it decides how to fix that error.

⁶ 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."

⁷ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁸ 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.

Is there an arguable case that the General Division failed to have the Commission answer the Claimant's questions?

[12] The Claimant argues that the Commission should have answered his questions. His questions included the following:

- Why did the Commission have two meetings with his union about applying for Employment Insurance benefits during a strike, if the membership did not qualify?
- How many striking employees received benefits from June 1 to August 5, 2021?
- Why did some striking employees receive benefits?
- Who decided to end benefits for the striking employees who had received benefits?
- Who decided to tell striking workers that they did not have to repay benefits?⁹

[13] He says that, because the Commission did not answer his questions, he did not get a fair hearing. He claims that the General Division should have “had the power to make the decision based on the specific facts of [his] case regarding inequity with [his] co-workers.”¹⁰ He suggests that the General Division had the power to make the Commission answer his questions, but that it failed to exercise this power.

[14] The General Division noted that it has limited powers. It found that it cannot make the Commission answer questions. It also found that it cannot change the law, or grant Employment Insurance benefits to the Claimant, even if some of his co-workers, for unknown reasons, received benefits.¹¹

[15] The General Division correctly identified its limited scope of powers. It cannot compel a party to answer any questions. And, more importantly, it cannot grant benefits

⁹ See Claimant's questions at GD6-2.

¹⁰ See Claimant's application to the Appeal Division, at AD1-5.

¹¹ General Division decision, at para 16.

if the *Employment Insurance Act* disentitles a claimant from receiving them, such as in the case of a labour dispute.

[16] For that reason, I am not satisfied that the Claimant has an arguable case that the General Division refused to exercise its powers. The General Division simply did not have the power to compel responses from a party, or the power to disregard the provisions of the *Employment Insurance Act*.

[17] Even if the General Division had the power to order the Commission to produce answers, this would not have changed the outcome. As the Claimant himself recognizes, he is not entitled to receive benefits when the work stoppage is attributable to a labour dispute. Given this fact, the General Division did not have any discretion to grant benefits to the Claimant.

Conclusion

[18] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division