



Citation: *RA v Canada Employment Insurance Commission*, 2022 SST 81

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 23, 2021
(GE-21-1590)

Tribunal member: Jude Samson

Decision date: February 10, 2022

File number: AD-22-41

Decision

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

Overview

[2] R. A. is the Claimant in this case. She applied for and received the Employment Insurance Emergency Response Benefit (EI-ERB). The Claimant thought her benefits started in March 2020, but they only started in April.

[3] Beginning around mid-November 2020, the Claimant tried phoning the Canada Employment Insurance Commission (Commission) to discuss the issue with them.¹ She phoned many times but was never able to get through because of long wait times.

[4] On January 9 and 11, 2021, the Claimant tried submitting EI-ERB claims by phone, but she wasn't able to do so. On January 11, 2021, the Claimant spoke to one of the Commission's agents. According to the agent, the Claimant couldn't receive any more EI-ERB payments because she had missed the application deadline of December 2, 2020.

[5] The Claimant asked the Commission to reconsider its decision based on the number of times she had tried phoning the Commission since November 2020. However, the Commission refused to change its decision.

[6] The Claimant then appealed the Commission's decision to the Tribunal's General Division. It too found that the Claimant didn't qualify for any more EI-ERB payments based on the December 2, 2020, deadline.

[7] The Claimant now wants to appeal the General Division decision to the Appeal Division. But she needs permission to appeal for the file to move forward.

¹ To be more precise, the Claimant was phoning Service Canada. Service Canada delivers programs for the Commission.

[8] The Claimant argues that the General Division based its decision on an important mistake about the facts of her case.

[9] The Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Issue

[10] The Claimant is raising one main issue: Is there an arguable case that the General Division based its decision on an important mistake about the facts of the case?

Analysis

[11] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[12] The legal test that the Claimant needs to meet at this step is a low one: Is there any arguable ground on which the appeal might succeed?² If the appeal has no reasonable chance of success, then I must refuse permission to appeal.³

[13] To decide this question, I considered whether the General Division could have based its decision on an important mistake about the facts of the case. I can consider this type of error.⁴

There is no arguable case that the General Division based its decision on an important mistake about the facts of the case

[14] The General Division had to decide whether the Claimant could apply for additional EI-ERB payments after the December 2, 2020, deadline.

² This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

³ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act (DESDA)*.

⁴ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESDA.

[15] In its decision, the General Division concluded that the *Employment Insurance Act* (EI Act) establishes essential criteria that an applicant must meet to qualify for the EI-ERB. Among those criteria is the need to submit a claim, and to do so before the December 2, 2020, deadline.

[16] However, the General Division found that the Claimant's earliest possible application date was in January 2021. So, she didn't qualify for the EI-ERB.

[17] The Claimant now argues that the General Division based its decision on an important mistake about the acts of the case.⁵ Specifically, the Claimant argues that the General Division didn't give enough weight to the number of times that she tried calling the Commission before the December 2, 2020, deadline. She says that she would have applied sooner if she had been able to get through to the Commission by then.

[18] Unfortunately for the Claimant, I've concluded that her arguments have no reasonable chance of success.

[19] First, the General Division understood that the Claimant had tried contacting the Commission several times before December 2, 2020.⁶ The General Division didn't make a mistake about that fact.

[20] Second, the General Division was right to focus on the Claimant's application, and not on her attempts to call the Commission or on her attempts to submit an application.

[21] The entire Employment Insurance program is application driven. The Commission must receive an application from a person before it can pay them benefits.

[22] Here, the law says that people must make a claim (apply) for the EI-ERB, and that each claim must relate to a two-week period between March 15, 2020, and

⁵ The Claimant's arguments are in documents AD1 and AD1B.

⁶ See paragraphs 15 and 19 of the General Division decision.

October 3, 2020.⁷ However, the law also says that claims can't be made after December 2, 2020.⁸

[23] And third, the Claimant argues that the General Division didn't give enough weight to her evidence. But the way the General Division weighs the evidence is not a relevant error that I can consider.⁹

[24] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹⁰

[25] The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. Finally, the Claimant has not argued that the General Division acted unfairly in any way.

Conclusion

[26] I have decided that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

⁷ See sections 153.7(1) and 153.8(1) of the EI Act for additional details.

⁸ See section 153.8(2) of the EI Act.

⁹ The Federal Court has confirmed this in cases like *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.

¹⁰ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.