



Citation: *TB v Canada Employment Insurance Commission*, 2022 SST 108

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. B.
Representative: S. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 12, 2022
(GE-21-2058)

Tribunal member: Pierre Lafontaine
Decision date: March 4, 2022
File number: AD-22-118

Decision

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

Overview

[2] The Applicant (Claimant) worked as a fisher from June to September 2020. He applied for fishing benefits in October 2020, and received the maximum of 26 weeks from October 11, 2020, to April 10, 2021. He then re-applied for fishing benefits in April 2021. The Respondent, the Canada Employment Insurance Commission (Commission), told him that he qualified for an extension of benefits, even though he did not have any fishing earnings since the previous summer. He received another 8 weeks of benefits.

[3] The Commission then decided that the Claimant was not entitled to those benefits because he did not have the fishing earnings he needed to start a new claim. It asked him to repay the 8 weeks of benefits, a total of \$4,584.

[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 winter fishing benefits. It concluded that the Commission correctly cancelled the claim for winter fishing benefits starting on April 18, 2021. The General Division also concluded that it did not have the authority to write-off the overpayment.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he is not satisfied with the General Division's decision.

[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 he is not satisfied with the General Division's decision. The Claimant puts forward that he was informed that his last Record of Employment could be used to establish a new claim. He applied on the advice of the Member of Parliament and Service Canada agents only to be informed later that he was not entitled to the benefits.

[14] The General Division had to decide whether the Claimant was entitled to receive fishing benefits from April 18, 2021.

[15] The evidence shows that the Claimant had a fishing benefits claim before the claim he made for April 18, 2021. He fished from June 1, 2020, to September 26, 2020. He had fishing earnings of \$16,519.86. He applied for fishing benefits on October 19, 2020, and received 26 weeks of benefits from October 11, 2020, to April 10, 2021. Since this claim for benefits was made on October 19, 2020, and the benefit period began on October 11, 2020, this was a summer claim.

[16] The evidence also shows that the Claimant then applied for fishing benefits on April 22, 2021, to start on April 18, 2021. Since he had made this initial claim on April 22, 2021, this was a winter claim.

[17] During the General Division hearing, the Claimant confirmed that he last fished on September 26, 2020. He therefore did not have fishing earnings from October 11, 2020, to April 17, 2021. The General Division concluded that the Claimant could not establish a winter claim based on his earnings.

[18] The General Division considered the temporary rules to help fishers access benefits. They allow a fishing claim to be calculated based on the

Claimant's highest earnings from the current claim, or the two preceding years **for the same season.**¹

[19] Because the Claimant had no earnings to establish a current claim on April 18, 2021, he had to have benefit periods for winter claims in 2019 or 2020.²

[20] The General Division determined that the Claimant did not have winter benefit periods established in 2019 and 2020. Therefore, he could not use these years to help him start a winter claim. The General Division concluded that the Claimant could not start a winter claim on April 18, 2021. It also concluded that it did not have the authority to write-off the overpayment.

[21] After reviewing the facts and the applicable fishing legislation, I cannot find that the General Division made arguably some reviewable error of fact or law upon which the appeal might succeed.

[22] It is also 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.³

[23] 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 General Division.⁴ 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.

[24] 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.

¹ See sections 153.1922 and 153.1923 of the *Employment Insurance Act* (EI Act).

² See sections 153.1922 and 153.1923 of the EI Act.

³ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

⁴ Section 112.1 of the EI Act

Conclusion

[25] Leave to appeal is refused. This means the appeal will not proceed.

[26] 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.

[27] 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