



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2022 SST 445

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: M. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
January 31, 2022 (GE-21-2499)

Tribunal member: Jude Samson
Decision date: May 4, 2022
File number: AD-22-151

Decision

[1] Permission (leave) to appeal is refused. The appeal won't proceed.

Overview

[2] M. B. is the Claimant in this case. The Canada Employment Insurance Commission (Commission) paid her Employment Insurance benefits in 2016 and 2017. After investigating, the Commission discovered that the Claimant hadn't declared her employment income while receiving benefits.

[3] This decision created an overpayment on the Claimant's account. The Commission also imposed a penalty on her and issued her a notice of violation.

[4] The Commission communicated its decision to the Claimant in a letter dated January 30, 2019. The Claimant could request a reconsideration of the decision at any time within 30 days after receiving it, or any further time that the Commission might allow.¹ However, the Claimant says that she didn't get the decision letter in a timely manner.

[5] On September 8, 2021, the Claimant asked the Commission to reconsider its January 2019 decision. The Commission denied the request, saying that the Claimant had made it late and that she didn't meet the factors for an extension of time.²

[6] The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division. It dismissed the appeal, saying that the Claimant's reconsideration request had been made late and that the Commission had exercised its discretion judicially when it denied an extension of time.

¹ This period is set out in section 112(1) of the *Employment Insurance Act* (EI Act).

² The *Reconsideration Request Regulations* set out the factors to be met to get an extension of time for requesting a reconsideration.

[7] The Claimant now wants to appeal the General Division decision to the Appeal Division. She is arguing that the General Division made an error of jurisdiction by not considering her explanations as to why her reports contain incorrect information.

[8] Before this case can proceed, I must first decide whether to give permission to appeal.

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

Issue

[10] This decision focuses on the following issue: Could the General Division have made an error of jurisdiction by not considering why the Claimant's reports contain incorrect information?

Analysis

[11] 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 low: Has she raised an arguable case on which the appeal might succeed?³ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.⁴

[13] To answer this question, I have to decide whether the General Division may have made at least one of the errors set out in the law.⁵ The relevant errors include errors of jurisdiction.

³ See *Osaj v Canada (Attorney General)*, 2016 FC 115; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

⁴ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ These errors (or "grounds of appeal") are listed under section 58(1) of the DESD Act.

The General Division didn't make an error of jurisdiction by ignoring a relevant issue

[14] The Tribunal can consider only decisions that are first reconsidered by the Commission.⁶ However, the Commission refused to reconsider its January 2019 decision because the Claimant had made the reconsideration request late and didn't meet the factors for an extension of time.

[15] In this situation, the appeal before the General Division was very limited in scope. The only issues before the General Division were the following:

- Was the Claimant late in requesting a reconsideration?
- If so, did the Commission exercise its discretion judicially when it denied the Claimant an extension of the 30-day period to request a reconsideration?

[16] The General Division answered yes to both questions. As a result, the January 2019 decision was final. In other words, the Commission didn't need to reconsider its January 2019 decision, and, without such a reconsideration, the General Division wasn't permitted to consider it either.

[17] The Claimant says that the General Division should have also heard her testimony and considered the issues concerning the undeclared earnings, the penalty, and the violation. However, these matters concern the January 2019 decision, which was outside the limited scope of the issues that the General Division could decide.

[18] As a result, I find that the Claimant's argument has no reasonable chance of success.

⁶ See sections 112(1) and 113 of the EI Act.

[19] Aside from the Claimant's arguments, I have reviewed the file and examined the General Division decision.⁷ But I haven't noted other reasons to give permission to appeal.

Conclusion

[20] I have found 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 won't proceed.

Jude Samson
Member, Appeal Division

⁷ The Federal Court has said that I must do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.