



[TRANSLATION]

Citation : *BV v Canada Employment Insurance Commission*, 2022 SST 452

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
March 11, 2022 (GE-22-354)

Tribunal member: Pierre Lafontaine

Decision date: June 1, 2022

File number: AD-22-242

Decision

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

Overview

[2] The Applicant (Claimant) was laid off in March 2020 because of the pandemic. On March 27, 2020, he applied for Employment Insurance (EI) benefits. A benefit period for the EI Emergency Response Benefit (ERB) was established effective March 22, 2020.

[3] The Claimant completed his reports to receive the EI ERB on April 20, 2020. He got a message telling him to contact a Commission representative.

[4] The Claimant contacted a representative on January 21, 2021, for information about his claims. The Commission told him that the deadline for making his claims was December 2, 2020. Since he had not contacted the Commission before that date, he was not entitled to benefits.

[5] The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[6] The General Division found that, under the special measures introduced during the pandemic, a claim must not have been made after December 2, 2020. It decided that the Claimant was not entitled to the EI ERB, since he had made his claims after December 2, 2020.

[7] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. He argues that he applied on time and that he was unable to reach the Commission before December 2, 2020.

[8] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

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 the following:

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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[12] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] In support of his application for leave to appeal, the Claimant argues that he filed his claim within the time limit set out in the law. He says that he made repeated attempts to contact the Commission before December 2, 2020, but was unsuccessful.

[14] The evidence before the General Division shows that the Claimant qualified for the EI ERB as of March 22, 2020.

[15] On April 20, 2020, he completed his reports for the period from March 22, 2020, to April 4, 2020. He reported working 16 hours and earning \$231 during the period from March 22, 2020, to March 28, 2020. For the week of March 29, 2020, to April 4, 2020, he indicated that he had stopped working. He got a message that the report required the assistance of a representative.

[16] On January 21, 2021, the Claimant contacted the Commission. He was then told that he was not eligible for the EI ERB because he had applied for it after the December 2, 2020, deadline.

[17] The General Division did not accept the Claimant's version of the facts, namely that he was unable to reach the Commission for eight months while not receiving benefits.

[18] The law says that a claim for the EI ERB may be made for any two-week period starting on a Sunday and falling within the period beginning on March 15, 2020, and ending on October 3, 2020.¹

[19] As the General Division noted, the law also indicates that claimants are not eligible for the EI ERB if they apply after the December 2, 2020, deadline. The emergency legislation does not permit the Tribunal to extend the time for filing such a claim.²

[20] Unfortunately for the Claimant, an appeal to the Appeal Division is not an opportunity to resubmit your evidence and hope for a different outcome. I find that the Claimant has not raised any question of fact, law, or jurisdiction that could justify setting aside the decision under review.

¹ Section 153.8(1) of the *Employment Insurance Act* (Act)

² Section 153.8(2) of the Act

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division