



[TRANSLATION]

Citation: *YL v Canada Employment Insurance Commission*, 2022 SST 464

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Y. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
March 2, 2022 (GE-22-514)

Tribunal member: Jude Samson

Decision date: June 3, 2022

File number: AD-22-173

Decision

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

Overview

[2] Y. L. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) approved her application and paid her benefits.

[3] On reconsideration, the Commission found that the Claimant wasn't available for work while in college. This meant that she wasn't entitled to the benefits she had received during those periods. The Commission's decision created an overpayment on the Claimant's account.

[4] The Claimant appealed the Commission's decision to this Tribunal's General Division. It dismissed the appeal for the following reasons:

- The Claimant wasn't available for work while in school.
- The Tribunal doesn't have jurisdiction to make a decision on the issue of writing off an overpayment.

[5] The Claimant now wants to appeal the General Division decision to the Appeal Division. She argues that the General Division made an error of jurisdiction when it found that it could not decide the issue of writing off an overpayment. But, before the case can move forward, I must first decide whether to give permission.

[6] I find that the appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Issue

[7] This decision focuses on the following issue: Could the General Division have made an error when it found that it didn't have jurisdiction to deal with an issue relating to the write-off of an overpayment?

Analysis

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

[9] The legal test that the Claimant needs to meet at this step is low: Has she raised an arguable case that gives the appeal a reasonable chance of success?¹ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.²

The appeal has no reasonable chance of success

[10] In her notice of appeal, the Claimant just disputes the General Division's finding that it didn't have jurisdiction to make a decision on writing off an overpayment.

[11] The General Division's reasons on this point are at paragraphs 33 to 38 of its decision. In short, the Tribunal only has jurisdiction to review reconsideration decisions made by the Commission. But the Commission didn't make either an initial decision or a reconsideration decision on the issue of writing off the Claimant's overpayment. And, when the Commission does make such a decision, it isn't required to review it.³

[12] Despite the Tribunal's request, the Claimant hasn't provided more information about a relevant error.⁴

[13] In its decision, the General Division explained the limits of its powers clearly and persuasively. The General Division cited the relevant provisions of the law. In addition, Federal Court decisions support its conclusion.⁵ The Tribunal is bound to follow these decisions.

¹ See *Osaj v Canada (Attorney General)*, 2016 FC 115; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

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

³ See sections 112, 112.1, and 113 of the *Employment Insurance Act*.

⁴ See the Tribunal's letter dated April 6, 2022. The relevant errors (or "grounds of appeal") are listed under section 58(1) of the DESD Act.

⁵ See *Arksey v Canada (Attorney General)*, 2019 FC 1250 at paragraph 35; and *Smith v Canada (Attorney General)*, 2020 FC 1192 at paragraphs 16 and 36.

[14] As a result, I find that the Claimant's argument has no reasonable chance of success. It is bound to fail.

[15] Regardless of this finding, I can't just look at the specific ground of appeal that the Claimant has raised.⁶ So, I have reviewed the documents on file and the decision under appeal. But I haven't noted other reasons to give permission to appeal.

Conclusion

[16] I find 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.

[17] I would close by saying that I understand the Claimant's disappointment. I also encourage the Commission to consider the impact of its late decision when deciding whether to write off the Claimant's overpayment.

Jude Samson
Member, Appeal Division

⁶ 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.