



Citation: *KM v Canada Employment Insurance Commission*, 2022 SST 420

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: K. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 2, 2022
(GE-21-403)

Tribunal member: Jude Samson

Decision date: May 24, 2022

File number: AD-22-219

Decision

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

Overview

[2] K. M. is the Claimant in this case. The Canada Employment Insurance Commission (Commission) paid him Employment Insurance (EI) regular benefits. Later, the Claimant told the Commission that he had worked while receiving EI benefits.

[3] The Commission decided that this work affected the Claimant's EI benefits in two important ways:

- The Commission had to account for the Claimant's income and deduct an amount from his benefits. This is often called an allocation of earnings. Based on the Commission's allocation, the Claimant was overpaid \$1,796 in EI benefits.
- The Commission disqualified the Claimant from receiving EI benefits after February 2, 2018. The Commission concluded that, on that day, the Claimant quit his job without just cause.¹ This decision resulted in an overpayment of over \$15,000.

[4] The Claimant appealed the Commission's decisions to the Tribunal's General Division, but it dismissed his appeals.

[5] The General Division wrote two decisions. The Claimant now wants to appeal both decisions to the Tribunal's Appeal Division. **This decision is about the allocation issue only.**

[6] Unfortunately for the Claimant, I have decided that this appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

¹ In this context, "just cause" has a very specific meaning. It is defined under section 29(c) of the *Employment Insurance Act*.

Issue

[7] This decision focuses on one issue: Does the Claimant's appeal have a reasonable chance of success?

Analysis

[8] Most 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: 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

[10] To decide this question, I focused on whether the General Division could have made a relevant error.⁴

The appeal has no reasonable chance of success

[11] As part of its decision, the General Division had to decide two issues:

- Did the Claimant receive earnings (income from employment)?
- Did the Commission allocate the earnings correctly

[12] The General Division answered yes to both questions.

[13] The Claimant's arguments are sometimes difficult to understand. At one place, he wrote that the allocation is correct.⁵

[14] In other places, the Claimant seems to argue that the monies he received were "unofficial," so shouldn't be considered as income from employment. In support of his

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

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

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

⁵ See page AD1B-2.

arguments, the Claimant notes that he was paid mostly in prepaid credit cards, he received no pay stubs, deductions weren't taken from his pay, and it took months to receive his record of employment.

[15] The General Division considered these arguments and rejected them.⁶ It concluded that Claimant was paid for work done, and that the method of payment doesn't matter under the law.

[16] Basically, the Claimant is repeating the same arguments at the Appeal Division in hopes of getting a different result. But that isn't part of the Appeal Division's role.⁷

[17] Instead, the Claimant needed to identify relevant errors in the General Division decision. He hasn't done that, and none are immediately obvious to me.

[18] In the circumstances, the Claimant's appeal has no reasonable chance of success.

[19] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.⁸ The General Division summarized the law and used evidence to support its decision. I didn't find evidence that the General Division might have ignored or misinterpreted.

Conclusion

[20] I have concluded 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

⁶ See, especially, paragraphs 14–15 of the General Division decision.

⁷ See *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at paragraph 31.

⁸ 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.