



[TRANSLATION]

Citation: *VT v Canada Employment Insurance Commission*, 2022 SST 764

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: V. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 13, 2022 (GE-22-1067)

Tribunal member: Pierre Lafontaine

Decision date: August 16, 2022

File number: AD-22-400

Decision

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

Overview

[2] The Applicant (Claimant) applied for benefits on April 9, 2020. The Respondent (Commission) established a benefit period for the Employment Insurance Emergency Response Benefit (EI ERB). She received an advance payment of \$2,000 on April 13, 2020.

[3] On February 25, 2022, the Commission issued a reconsideration decision saying that the Claimant had to pay back the \$2,000 advance payment that was made to her when her benefit period was established, since she had gone back to work during the period in question. On reconsideration, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant was not eligible for the EI ERB as of May 23, 2020, given her return to work, and that she had to pay back the advance payment of \$2,000.

[5] The Claimant is seeking leave from the Appeal Division to appeal the General Division decision. She argues that the General Division did not consider the extraordinary circumstances related to the pandemic. The Claimant says that no specific law applies to her case and requires her to pay back the amount she was overpaid during the pandemic.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] 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

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

Analysis

[9] 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.

[10] 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] 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?

[12] The Claimant argues that the General Division did not consider the extraordinary circumstances related to the pandemic. The Claimant says that no specific law applies

to her case and requires her to pay back the amount she was overpaid during the pandemic.

[13] The Claimant made an initial claim for Employment Insurance benefits on April 9, 2020. The claim for the EI ERB started March 29, 2020.¹

[14] The undisputed evidence shows that the Claimant went back to work full-time on May 19, 2020.²

[15] The Claimant received a total of \$6,000 for the EI ERB. She received a \$2,000 advance payment and \$4,000 (8 x \$500) for the period from March 29, 2020, to May 23, 2020.

[16] The Claimant was therefore eligible for only 8 weeks of the EI ERB, but she received a total of 12 weeks (8 weeks from March 29 to May 23, 2020 + 4 weeks of the \$2,000 advance = 12 weeks). Because she was not eligible for the additional 4 weeks of the advance payment, an overpayment of \$2,000 was correctly established.

[17] I note that the legislation implemented during the pandemic allows the Commission to decide whether a person has received money by way of the EI ERB for which they were not eligible.³ The legislation also says that the person must return the amount received as an EI ERB overpayment.⁴

[18] Although I sympathize with the Claimant's situation, the law unfortunately does not allow any discrepancy and gives the Tribunal **no discretion**—not even for humanitarian reasons—to write off the overpayment.⁵

[19] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I am of the view that the appeal has no

¹ Under section 153.1310 of the *Employment Insurance Act* (Act), between March 15, 2020, and September 26, 2020, all applications for regular or sickness benefits were considered applications for the Employment Insurance Emergency Response Benefit.

² See GD-3-40.

³ See section 153.1303(1) of the Act.

⁴ See section 153.1301 of the Act.

⁵ *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

reasonable chance of success. The Claimant has not raised an issue that could justify setting aside the decision under review.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division