



Citation: *ML v Canada Employment Insurance Commission*, 2022 SST 682

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 30, 2022
(GE-22-1094)

Tribunal member: Janet Lew

Decision date: July 28, 2022

File number: AD-22-373

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

Overview

[2] This is an appeal of the General Division decision. The General Division found that the Applicant, M. L. (Claimant), did not prove that he was available for work while in school on a full-time basis. This disentitled him from receiving Employment Insurance benefits that he had already received. This left him with an overpayment of benefits that he was expected to repay.

[3] The Claimant argues that the General Division made errors about the facts.

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.

[5] I am satisfied that the appeal has a reasonable chance of success. Therefore, I am giving the Claimant permission to move ahead with his appeal.

Issue

[6] The Claimant says the issue is whether there is an arguable case that the General Division overlooked important facts.

¹ Under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Analysis

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.

[8] For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

[9] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

Is there an arguable case that the General Division overlooked important facts regarding the Claimant's application for benefits?

[10] The Claimant argues that the General Division made a factual error when it decided that he was disentitled from receiving Employment Insurance benefits. He suggests that it overlooked the fact that his application for Employment Insurance benefits disclosed that he was a full-time student and that he would complete his schooling before accepting any full-time work.

[11] The Claimant suggests that if the General Division had been mindful of these facts, it would have determined that the Respondent, the Canada Employment Insurance Commission (Commission), should have denied his claim from the outset. If the Commission had denied his claim in the first place, then he would not have received any benefits. And, he would not be left with a large overpayment.

[12] The Claimant does not otherwise challenge any of the findings that the General Division made. For instance, he does not challenge the General Division's finding that he would not leave school to accept a full-time job if it conflicted with his schooling. He also does not challenge the General Division's findings about his job search efforts.

[13] It is true that the General Division did not mention the fact that the Claimant gave details about his training and work search in his application for Employment Insurance benefits. The Claimant clearly stated that he would accept full-time work as long as he could delay the start date to allow him to finish the course or program.³

[14] But, there is a general presumption in law that a decision-maker has considered all of the evidence before it. A decision-maker has to address any evidence only if it is of some “probative” value, meaning that it could affect the outcome of the case. So, the evidence has to be of some strength, it supports the inferences sought to be drawn from it, and it tends to prove what is at issue.⁴

[15] The issue before the General Division was whether the Claimant was capable of and available for work while he was attending school. The fact that the Commission could have denied the Claimant’s application early on was not at issue before the General Division. The fact that the Commission could have denied the Claimant’s application simply had no bearing on the outcome in the appeal at the General Division.

[16] Furthermore, it is clear from the *Employment Insurance Act* that the Commission could pay benefits to a student first, and then verify the claim later.⁵ This was part of the temporary measures brought in during the early stages of the pandemic. The measures allowed the Commission to verify the Claimant’s entitlement even after it had already paid benefits.

[17] I have also looked at the underlying record to make sure the General Division did not mischaracterize or overlook any of the evidence upon which it based its decision. The General Division’s findings are consistent with the evidence before it. I also do not see any errors of law, either on the face of the record or otherwise.

³ See Claimant’s application for Employment Insurance benefits, at pages GD3-3 to GD3-22.

⁴ See *Cammack v Martins Estate*, 2002 CanLII 11072 (ON SC) for a definition of “probative.”

⁵ See section 153.161(2) of the *Employment Insurance Act*. The provision was in force from September 27, 2020 to September 25, 2021. The Claimant had applied for benefits in October 2020.

[18] I am not satisfied that the appeal has a reasonable chance of success. The evidence supports the General Division's findings that the Claimant was not available for work.

[19] Finally, I note that the General Division set out the Claimant's options regarding the overpayment. He is encouraged to pursue these, if he has not already.

Conclusion

[20] The Claimant does not have an arguable case. Permission to appeal is refused. This means that the appeal will not go ahead.

Janet Lew
Member, Appeal Division