



Citation: *KE v Canada Employment Insurance Commission*, 2022 SST 734

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. E.
Representative: W. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 6, 2022
(GE-22-698)

Tribunal member: Janet Lew

Decision date: August 5, 2022
File number: AD-22-248

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, K. E. (Claimant), is appealing the General Division decision.

[3] The Claimant received an advance of \$2,000 of Employment Insurance Emergency Response Benefits (ERB). She had to repay the advance because she returned to work before the Respondent, the Canada Employment Insurance Commission (Commission) could offset the advance against any benefits that would have been payable to her if she had remained off work.

[4] The Claimant does not challenge the General Division's findings. However, she argues that the General Division failed to exercise its discretion. She argues that the General Division could have exercised its discretion and ruled in her favour, taking into account the undue financial hardship she is facing.

[5] Before the Claimant can move ahead with her 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.

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

Issue

[7] Is there an arguable case that the General Division failed to exercise its discretion?

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

[8] 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.³

[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 failed to exercise its discretion?

[10] The Claimant argues that the General Division failed to exercise its discretion and rule in her favour.

[11] Presumably, the Claimant is arguing that the General Division should have decided that she was entitled to retain the advance of \$2,000 or that it should have waived the overpayment together. The Claimant argues the General Division should have ruled in her favour because:

- the Commission gave her incomplete or inaccurate information about the advance and
- she is facing financial hardship, particularly with the current increases in the cost of living.

[12] There was no basis for the General Division to rule in the Claimant's favour.

³ See section 58(1) of the DESD Act. 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.

[13] The General Division is a purely statutory creature. It gets its powers from the *Department of Employment and Social Development Act* (DESDA). The DESDA defines the General Division's scope of powers.

[14] However, the DESDA does not confer any discretionary power on the General Division. The General Division simply lacks any discretionary power.

[15] In particular, the General Division did not have any discretionary power to find that the Claimant was entitled to the advance because of misleading or incomplete information, or because she is facing financial hardship.

[16] I am not satisfied that the Claimant has an arguable case that the General Division failed to exercise any discretionary authority. The General Division simply did not have any discretion to exercise.

The Claimant's options

[17] Early on, the Social Security Tribunal (Tribunal) suggested that the Claimant could pursue two options:⁴

- she could ask Service Canada to write off her Emergency Response Benefit overpayment
- she could contact Canada Revenue Agency's collections services (Debt Management Call Centre) (1-866-864-5823) to ask for a write off due to financial hardship

[18] The Claimant states that Service Canada rejected her request to write off the overpayment. Service Canada explained that it would not write off the overpayment because it did not come about through its own error or any delay.

[19] The Claimant says that Service Canada made a mistake in rejecting her request. If the Claimant disagrees with Service Canada's decision, her option is to file a notice of application for judicial review with the Federal Court. However, I note that the Claimant

⁴ See Social Security Tribunal letter dated April 28, 2022, at AD2.

may already be too late to pursue this. She should have filed an application within 30 days of receiving Service Canada's decision.

[20] It is unclear whether the Claimant pursued the second option of calling Canada Revenue Agency. This remains open to her. She can also discuss repayment arrangements or plans with Canada Revenue Agency.

Conclusion

[21] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division