



Citation: *GH v Canada Employment Insurance Commission*, 2022 SST 887

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: G. H.
Representative: A. H.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 29, 2022
(GE-22-1422)

Tribunal member: Janet Lew
Decision date: September 10, 2022
File number: AD-22-597

Decision

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

Overview

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

[3] The General Division found that the Claimant received an advance of \$2,000 in Employment Insurance Emergency Response Benefits. The General Division determined that this advance ultimately created an overpayment of benefits.

[4] The Claimant disagrees with the General Division decision. The Claimant does not challenge the General Division's calculation of the amount of the overpayment. But, she notes that she did not apply for Emergency Response Benefits. On top of that, no one told her about the benefit nor what impact it would have on her. The Claimant states that repaying the advance will financially devastate her. In essence, the Claimant is arguing that she should not be responsible for the overpayment.

[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 made any procedural, jurisdictional, legal, or factual errors?

¹ Under section 58(2) of the *Department of Employment and Social Development 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.

[9] 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.

[10] 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.

The General Division did not make any procedural, jurisdictional, legal, or factual errors

[11] The Claimant does not say that the General Division made any procedural, jurisdictional, legal, or factual errors. She does not challenge any of the General Division's findings of fact, or its interpretation of the *Employment Insurance Act*. The Claimant does not suggest either that the process at the General Division was unfair in any way, or that it failed to decide something that it had the power to decide.

[12] The Claimant notes that she never applied for the Emergency Response Benefit. In other words, she says the Respondent, the Canada Employment Insurance Commission (Commission) should have paid her Employment Insurance benefits instead of the Emergency Response Benefit. That way, she would have avoided getting the Emergency Response Benefit.

[13] However, the Claimant applied for benefits in late March 2020. At that point, she was deemed to have made a claim for the Employment Insurance Emergency Response Benefit under section 153.1310 of the *Employment Insurance Act*. Under this section, claimants are automatically treated as if they applied for the Emergency Response Benefit. Claimants did not have a choice about which benefit to get.

[14] In other words, it did not matter that the Claimant had not specifically applied for Employment Insurance Emergency Response Benefits. The only benefits payable to the Claimant between March 15, 2020 and September 26, 2020, were Emergency Response Benefits.

[15] The General Division properly interpreted the *Employment Insurance Act* in finding that everyone who applied and qualified for Employment Insurance benefits after March 15, 2020 and October 3, 2020,³ automatically received Emergency Response Benefits.

[16] Despite the financial and other consequences that repayment will have on the Claimant, the General Division was also correct in finding that an overpayment exists if a claimant receives benefits that they were not entitled to receive in the first place. The overpayment exists, even if there had been no communication with a claimant about the payments, and even if a claimant was in no way responsible for creating the overpayment.

Options

[17] The Claimant can contact Canada Revenue Agency (1-866-864-5823) about a repayment schedule. Or, she can write to the Commission about possibly writing off or reducing the amount of the overpayment, if she can demonstrate undue hardship.

Conclusion

[18] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

³ Section 153.8(2) of the *Employment Insurance Act* actually allowed claims to be made up to December 2, 2020. This date has no bearing on the outcome of the appeal.