



Citation: *JS v Canada Employment Insurance Commission*, 2022 SST 893

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: J. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 20, 2022
(GE-22-1492)

Tribunal member: Janet Lew

Decision date: September 13, 2022

File number: AD-22-461

Decision

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

Overview

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

[3] The General Division found that the Claimant was not entitled to Employment Insurance benefits because he was working full weeks in self-employment. This created an overpayment of benefits. The General Division determined that it did not have any authority to write-off or reduce the overpayment.

[4] The Claimant disagrees with the General Division decision. He argues the General Division should not have applied the usual rules when it decided whether he was entitled to Employment Insurance benefits. He argues that it is unfair to apply the usual rules when pandemic-related restrictions severely affected his business and his and his family's well-being. Having to repay the overpayment compounds the hardship he has endured.

[5] 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.

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

¹ Under section 58(2) of the *Department of Employment and Social Development Act*, I have to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

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

Issue

[7] Is there an arguable case that the General Division failed to consider the impact of the pandemic on his eligibility?

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 that the General Division made.

[9] For factual errors, the General Division had to have based its decision on an error that it 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 the Appeal Division decides that the General Division made an error, it then decides how to fix that error.

Is there an arguable case that the General Division failed to consider the impact of the pandemic on his eligibility?

[11] The Claimant argues that the General Division failed to consider the impact of the pandemic on his eligibility for benefits. He argues that, because of the pandemic, the usual rules should not apply when considering eligibility.

[12] Temporary measures under the *Employment Insurance Act* were introduced to facilitate access to benefits during the pandemic. For instance, section 153.9(4) of the *Employment Insurance Act* provided an exception to the eligibility rules for the Employment Insurance Emergency Response Benefit. The exception extended to self-employed persons. So, those who were self-employed could qualify for the Emergency Response Benefit.

[13] As the General Division noted, the Claimant established a claim for the Emergency Response Benefit. However, this measure ended and was no longer available after October 3, 2020.

[14] The General Division member stated that she based her decision on the facts and the applicable law. Apart from the temporary measures that facilitated access to benefits, no other provisions in the *Employment Insurance Act* enabled the member to consider any pandemic-related circumstances and its effect on the Claimant's business when she examined the Claimant's entitlement to benefits after October 3, 2020.

[15] To determine eligibility, the General Division had to apply the provisions set out in the *Employment Insurance Act*, even if the Claimant says that the *Employment Insurance Act* did not take into account the exceptional economic conditions at the time. The General Division had to determine whether the Claimant met the requirements set out in the *Employment Insurance Act*. The General Division did not have any authority to relax the requirements or extend the temporary measures.

[16] I am not satisfied that there is an arguable case that the General Division member failed to consider the impact of the pandemic on the Claimant's business and on his family, or that she should have relaxed the rules when she assessed his eligibility for benefits. The General Division member was simply limited in what she could do.

New evidence

[17] The Claimant has since filed personal banking information. However, the General Division did not have this evidence. The Appeal Division generally does not consider new evidence, and it does not assess the Claimant's case at this stage of the appeal. So, there is nothing that I can do with this information.

[18] The Claimant says that the personal banking account statements show his personal income, expenses, Employment Insurance income, and loan interest.³ The Claimant's company continued to incur expenses but business dried up during the

³ See personal banking account statements filed August 22, 2022, at AD1A.

pandemic. Apart from the fact that the General Division did not have this information, the personal banking information generally was irrelevant to the General Division's enquiry into the extent of the Claimant's involvement in self-employment.

[19] Possibly this new evidence could be relevant to the issue of the Claimant's investments in his company. Even so, the nature of this evidence does not seem to disprove the General Division's findings that the Claimant was working full work weeks in his self-employment. But, if the Claimant believes that it does, he can file an application with the General Division to rescind or amend its decision.

[20] This is not to suggest that the Claimant would succeed with such an application. After all, there are certain requirements to meet. But, this would be the only avenue for the Claimant to try to get the new information accepted into evidence.

Overpayment

[21] The Claimant has a sizeable overpayment. It adds to the hardship that he has already endured because of the pandemic.

[22] The General Division referred to the fact that the Claimant can ask the Respondent, the Canada Employment Insurance Commission, for a possible write-off. The Claimant might be able to seek a write-off or reduction if he can establish undue hardship.

[23] As the General Division noted, unless the Claimant has already explored this, there is also the option of contacting Canada Revenue Agency's Debt Management Call Centre at 1-866-864-5823 about a repayment schedule.

Conclusion

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

Janet Lew
Member, Appeal Division