



Citation: *KE v Canada Employment Insurance Commission*, 2022 SST 822

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 17, 2022
(GE-22-1123)

Tribunal member: Janet Lew

Decision date: August 29, 2022

File number: AD-22-426

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

[4] The Claimant argues that the law was unfair and poorly administered. After all, he had applied for Employment Insurance regular benefits. He had not asked for Emergency Response benefits, and he had not asked for any advance payments. Otherwise, the Claimant does not allege any errors or wrongdoing on the part of the General Division.

[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.

Issue

[7] Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors?

¹ Under section 58(1) 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.

Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors?

[11] The Claimant does not say that the General Division made any jurisdictional, procedural, legal, or factual errors. He 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.

– The General Division's findings of fact

[12] I have reviewed the underlying record to make sure the General Division did not ignore or misconstrue any of the evidence that was before it. I am satisfied that the General Division did not overlook or misconstrue any of the evidence that could have affected the outcome of the appeal. The General Division's findings are consistent with the evidence.

[13] There is one factual error, but it does not change the outcome. The General Division found that the Commission made a \$2,000 advance payment to Canadians who requested and qualified for the Emergency Response Benefit. The General

Division suggested that the Claimant had requested this particular benefit. Yet, it is clear from the evidence that the Claimant had not specifically asked for this benefit. When he asked the Commission to reconsider its decision, he wrote, “I didn’t request it [the Emergency Response Benefit].”³

[14] The Commission acknowledged the Claimant’s arguments.⁴ It noted that the Claimant had stated that he was only pursuing Employment Insurance benefits, rather than the Emergency Response Benefit.

[15] Despite the General Division’s misstatement of the Claimant’s evidence, I find that nothing turns on it. In other words, the error does not change the outcome. When the Claimant applied for benefits on March 21, 2020,⁵ he was deemed to have made a claim for the Employment Insurance emergency response benefit under section 153.1310 of the *Employment Insurance Act*.

[16] Under this section, claimants are automatically treated as if they applied for the emergency response benefit. Claimants do not have a choice.

[17] In other words, it did not matter that the Claimant had not specifically applied for Employment Insurance emergency response benefits. As long as he applied for Employment Insurance benefits between March 15, 2020 and September 26, 2020, he was going to get the emergency response benefit.

– **The General Division’s interpretation of the *Employment Insurance Act***

[18] I have reviewed the General Division decision. The General Division reviewed the *Employment Insurance Act* to determine whether the Commission should have paid the Emergency Response Benefit to the Claimant in the first place. It also looked to see whether the Commission had any authority to make advance payments.

³ Request for Reconsideration, filed February 3, 2022, at GD 3-24.

⁴ Representations of the Commission to the Social Security Tribunal-Employment Insurance Section, at GD4-1 to GD4-2.

⁵ See Claimant’s application for benefits, at GD3-13.

[19] The General Division assessed whether the Commission had properly calculated the amount of the payments and resulting overpayment to the Claimant, in accordance with the *Employment Insurance Act*. Finally, the General Division also examined whether it (and the Commission) could waive any overpayments.

[20] The General Division's analysis on each of these issues was consistent with the *Employment Insurance Act*. Therefore, I am not satisfied that the Claimant has raised an arguable case that the General Division misinterpreted the *Employment Insurance Act*.

[21] The General Division also recognized that it did not have any authority to write off any overpayment. The General Division pointed out the options that the Claimant could pursue to either reduce or waive the overpayment. I do not know whether the Claimant has formally asked the Commission about writing off the overpayment, but he would have to go through this step first before pursuing a review at the Federal Court.

[22] Finally, the Claimant argues that the law was unfair and poorly administered. But this does not speak to any of the grounds of appeal because it does not address anything that the General Division might have done. The General Division is not the right forum for the Claimant to pursue any complaints against how the *Employment Insurance Act* was drafted and applied.

Conclusion

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

Janet Lew
Member, Appeal Division