



Citation: *SP v Canada Employment Insurance Commission*, 2022 SST 913

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: S. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 13, 2022
(GE-20-587)

Tribunal member: Melanie Petrunia

Decision date: September 19, 2022

File number: AD-22-480

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, S. P. (Claimant), stopped working in March 2019 and applied for Short Term Disability (STD) benefits through her work. Her claim was rejected and she applied for employment insurance (EI) sickness benefits. The decision to deny her STD benefits was changed and she received a retroactive STD benefit payment as well as a Long Term Disability (LTD) benefit payment. The Claimant transitioned to maternity leave on July 20, 2019.

[3] The Commission allocated the money that the Claimant received from the STD and LTD benefits. The Commission decided that the Claimant was not entitled to \$6,780 of EI benefits that she received, and this amount had to be repaid.

[4] The Commission also recalculated the Claimant's weekly benefit rate. It decided that the Claimant had an interruption of earnings when she stopped receiving the STD benefits and not when she stopped working. The later date resulted in lower earnings during her qualifying period and reduced her weekly benefit rate from \$506 to \$460.

[5] The Claimant appealed these decisions to the Tribunal's General Division. The General Division dismissed the appeal. It found that the STD benefits received by the Claimant were earnings and were properly allocated by the Commission. The General Division found that the Claimant received \$6,780 of EI benefits that she was not entitled to receive. It also found that the Commission correctly recalculated the Claimant's weekly benefit rate.

[6] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division did not follow procedural fairness.

[7] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Is there an arguable case that the General Division made important errors of fact?

Analysis

[9] The *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision.¹ An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;² or
- d) made an error in law.³

[10] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

¹ DESD Act, s 58(2).

² The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

³ This paraphrases the grounds of appeal.

[11] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[12] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁴

Is there an arguable case that the General Division did not follow procedural fairness?

[13] In her application for leave to appeal, the Claimant states that the General Division did not follow procedural fairness. She states that the General Division did not take into account the wrong information that she was given by the Commission.

[14] The Claimant argues that Service Canada should take some responsibility because she had made inquiries and was told by an individual named Ashley that she did not owe any money. She says that she keeps getting the wrong information from Service Canada and that she believes she had received a fraudulent phone call.⁵

[15] The Claimant made these arguments before the General Division as well. In its decision, the General Division summarized the Claimant's testimony. The Claimant said that she was told by an agent with Service Canada that money she received from STD benefits was not insurable hours. For this reason, the Claimant argued that the money should not be considered earnings.⁶

[16] She also testified she received a call stating that she owed \$7,000. She stated that she called Service Canada and had a conversation with the agent named

⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁵ AD1-4

⁶ See General Division decision at para 22.

Ashley. This agent told her that she there was nothing in her file showing that she owed any money. She then decided that the first call was likely a fraudulent phone call.⁷

[17] The Claimant argued at the General Division that she was told that she would not and did not owe money.⁸ The General Division took these arguments into consideration.

[18] The General Division considered the specifics of the STD plan the Claimant had through her employment. It found that this plan is a group wage-loss indemnity plan.⁹ The General Division properly applied the law, which says that payments received from a group wage-loss indemnity plan are earnings, despite what the Claimant was told.¹⁰

[19] The General Division then found that these earnings have to be allocated to certain weeks according to the EI Act.¹¹ It properly determined which weeks the earnings had to be allocated to and found that the Claimant was not entitled to the benefits she received from April 7, 2019 to July 20, 2019.¹² The General Division explained how a claimant's weekly insurable earnings are determined.¹³ It applied the steps to making this determination to the Claimant's circumstances and found that the Commission correctly recalculated her weekly benefit rate as \$460.¹⁴

[20] The General Division did not fail to provide a fair process in making these determinations. The Claimant had an opportunity to fully present her case at the General Division. The General Division considered the Claimant's arguments that she received different information from Service Canada agents and her reasons for disagreeing with the Commission. It clearly explained the law and why it disagreed with the Claimant.

[21] The General Division took into consideration all of the arguments that the Claimant raises in her Application for Leave to Appeal. There is no arguable case that

⁷ See General Division decision at para 23.

⁸ See General Division decision at para 24.

⁹ See General Division decision at para 29.

¹⁰ See section 35(2)(c)(i) of the EI Regulations.

¹¹ See General Division decision at para 33 and section 36 of the EI Regulations.

¹² See General Division decision at para 38.

¹³ See General Division decision at para 41.

¹⁴ See General Division decision at para 42 to 46.

the General Division did not follow procedural fairness. The Claimant is restating the same arguments as at the General Division and asking for the Appeal Division to come to a different conclusion.

There is no arguable case that the General Division made any other reviewable errors

[22] Aside from the Claimant's arguments, I have also considered other grounds of appeal. The Claimant has not pointed to any important errors of fact. There is no arguable case that the General Division made an error of jurisdiction and I have not identified any errors of law.

[23] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[24] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division