



Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 951

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. T.

Respondent: Canada Employment Insurance Commission
Representative: Melanie Allen

Decision under appeal: General Division decision dated November 4, 2021
(GE-21-1341)

Tribunal member: Shirley Netten

Type of hearing: Teleconference

Hearing date: September 21, 2022

Hearing participants: Appellant

Decision date: September 27, 2022

File number: AD-21-372

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant, A. T., applied for employment insurance (EI) regular benefits in October 2019. He received benefits from October 27, 2019 to April 18, 2020.¹

[3] The Claimant's former employer paid him vacation and severance pay totaling \$54,153.85. Service Canada² considered this amount to be earnings, and allocated (offset) it against his EI claim. This resulted in an overpayment and debt of \$4,791.

[4] The Claimant's appeal to this Tribunal's General Division was dismissed in November 2021. The Claimant appeals that decision to the Tribunal's Appeal Division.

[5] The Claimant no longer disputes the way in which the Commission allocated the earnings against his claim.³ But he says that the earnings that were allocated should be reduced by the amount he spent on legal fees to get his severance pay (thereby reducing his overpayment and debt). The Claimant says that the General Division acted unfairly by not giving him enough time to file evidence about his legal fees.

[6] I have found that the General Division did not act unfairly, and so I have dismissed the appeal.

Issue

[7] The outstanding issue in this appeal is whether the General Division proceeded in a way that was unfair, by not giving the Claimant more time to produce evidence of his legal fees.

¹ 25 weeks at the gross weekly benefit rate of \$562

² Service Canada acts on behalf of the Canada Employment Insurance Commission.

³ See the Commission's arguments at AD8, including an illustration of the allocation starting from the correct week of separation (and not the date that was mistakenly mentioned in the General Division decision).

Analysis

[8] Claimants aren't allowed to start their appeal over again at the Appeal Division. The Appeal Division can only intervene if the General Division made certain types of error. One of the possible errors (or, grounds of appeal) is that the General Division didn't provide a fair process.⁴

[9] The Claimant suggests that he didn't have a fair opportunity to present his case because the General Division didn't give him enough time to get an invoice from his lawyer.

The General Division didn't act unfairly

[10] By December 10, 2019, the Claimant had negotiated a severance package with his former employer.⁵ Service Canada sent the Claimant its allocation decision, and notice of debt, in May 2021. In his request for reconsideration, the Claimant mentioned his legal fees.

[11] In June 2021, a Service Canada agent explained to the Claimant that legal fees could change the allocation and reduce his debt. The agent gave him a week to provide documentation of those fees. The agent said that the previous decision would have to be maintained without proof of legal fees paid. Since nothing was sent in, the agent maintained the previous decision in July 2021.

[12] On appeal to the General Division in August 2021, the Claimant again mentioned significant legal fees incurred to reach a settlement with the employer. Again, the Claimant did not provide an invoice, receipt or other documentation to support the fees paid. A hearing was scheduled, and then rescheduled at the Claimant's request. The Claimant did not ask for additional time to obtain documentation of his legal fees. The

⁴ This error is described in section 58(1) of the *Department of Employment and Social Development Act* as a failure to observe a principle of natural justice. The principles of natural justice are about procedural fairness, and include the right to present one's case.

⁵ December 10, 2019 is the date of the amended Record of Employment, including the severance pay.

Claimant did not attend the hearing. He did not contact the General Division to request an adjournment or explain his absence.

[13] By the time the General Division issued its decision in November 2021, approximately two years had passed since the severance pay was negotiated. Over four months had passed since Service Canada told the Claimant that documentation of legal fees was needed for the allocation to be adjusted. It's unclear why the Claimant didn't have a receipt for fees paid to his lawyer. Even if I were to accept that the Claimant was having difficulty obtaining his receipt for legal services, the Claimant did not ask the General Division for more time to obtain that documentation.

[14] The onus is on a claimant to prove that part of the separation monies received was for something other than earnings (in this case, that an amount went to legal fees paid to secure the settlement).⁶ And, the person who appeals to the General Division has the burden of bringing the evidence he or she wants to rely upon.⁷ If a party has a reasonable explanation for why it needs more time to collect relevant evidence and requests extra time to do so, it might in some cases be unfair for the General Division to refuse that request. But it is not up to the General Division to wait, on its own initiative, for relevant evidence to appear.

[15] Here, the Claimant had more than enough time to obtain and submit a receipt for any legal fees paid to negotiate the settlement with his former employer. Importantly, he didn't tell the General Division (or Service Canada) that he was having trouble getting his receipt and he didn't ask for more time to file it. In these circumstances, I can't conclude that the General Division proceeded in a way that was unfair.

[16] Accordingly, I must dismiss the Claimant's appeal.

⁶ See, for example, *Bourgeois v Canada (Attorney General)*, 2004 FCA 117

⁷ The Federal Court of Appeal says this in *Wilson v Canada (Attorney General)*, 2019 FCA 49

Conclusion

[17] The appeal is dismissed.

Shirley Netten
Member, Appeal Division