



Citation: *NH v Canada Employment Insurance Commission*, 2022 SST 984

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	N. H.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated July 7, 2022 (GE-22-1542)
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Tribunal member:	Melanie Petrunia
Decision date:	September 29, 2022
File number:	AD-22-493

Decision

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

Overview

[2] The Appellant, N. H. (Claimant), applied for employment insurance (EI) regular benefits on March 20, 2020, and filed a renewal claim for the week of September 27, 2020. Because of amendments to the EI Act, the Claimant received the Emergency Relief Benefit (ERB).

[3] The Claimant received an advance of \$2,000 of ERB, equivalent to four weeks of benefits. She also received benefits for the three weeks that she had applied for in March and September 2020. The Commission intended to withhold four weeks of benefits later in her benefit period in order to recover the advance. The Claimant did not collect the ERB for long enough for the amount to be recovered which the Commission said resulted in an overpayment of \$2,000.

[4] The Claimant appealed this decision to the Tribunal's General Division, arguing that she returned to work but had her hours reduced. She wanted the overpayment erased or reduced. The General Division dismissed the appeal. It decided that the Claimant was not entitled to the \$2,000 advance.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division made an error of jurisdiction. 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.

Issues

[6] The issues are:

- a) Is there an arguable case that the General Division made an error of jurisdiction by failing to ask the Claimant when she went off work in September 2020?
- b) Is there an arguable case that the General Division based its decision on an important error of fact?

Analysis

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).² An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) provided a fair process;
- b) decided all the questions that it had to decide, without deciding questions that were beyond its powers to decide;
- c) based its decision on an important factual error;³ or
- d) misinterpreted or misapplied the law.⁴

[9] 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

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[10] 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.

[11] I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

Does the Claimant raise some reviewable error upon which the appeal might succeed?

[12] In her application for leave to appeal, the Claimant states that the General Division made an error of jurisdiction. She argues that the General Division based its decision on the fact that she went off work again on September 27, 2021.

[13] The Claimant argues that her last day of work was actually September 4th but she applied for EI late and could only back date so far. She argues that she was not asked by the General Division member when she went off work, only the month was mentioned.

[14] In its decision, the General Division considered the Commission's position that it paid the Claimant a \$2,000 advance, as well as payment for two weeks in March 2020 and one week in September 2020. It accepted that the Claimant was paid the equivalent of seven weeks of ERB payments at a rate of \$500 per week. It found that she was only eligible for three weeks and therefore had to repay the advance that she received.⁶

[15] At the hearing before the General Division, the member confirmed that the Claimant had received the Commission's written submissions.⁷ In these submissions,

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁶ General Division decision at paras 26 and 27.

⁷ Recording of General Division hearing at 2:45

the Commission's position is clear that the Claimant was entitled to three weeks of ERB, two weeks while she was required to quarantine in March 2020 and one week when she applied in September, 2020.⁸

[16] The Claimant stated, at the hearing before the General Division, that she went back to work after her quarantine period. She worked from home for six weeks and then returned to the office in April 2020.⁹ She confirmed that she stopped filling out reports because she was able to pay her bills and knew that she would be required to pay tax on the benefits that she received.¹⁰

[17] The General Division member then asked the Claimant about the week of benefits that she filed for in September 2020. She was asked what had happened in September.¹¹ The Claimant explained that she did not like her job at that time and decided to quit to return to school. Her sister told her she should apply for EI benefits, despite that fact that she had quit her job. She decided to apply and was approved.¹²

[18] The Claimant was also asked by the General Division member if there was anything further that she wished to highlight. The Claimant did not say anything about having left her job earlier in the month or argue that she should have been entitled to more weeks of benefits in September 2020.¹³

[19] I find that there is no arguable case that the General Division made an error of jurisdiction. The Claimant was aware of the Commission's position and was asked about the claim that she made for one week of benefits in September 2020. The Claimant had an opportunity to explain what happened in September 2020.

[20] The Claimant told the General Division member that she did not think she would qualify for benefits because she quit her job in order to go back to school. At the suggestion of her sister, she decided to apply anyway and was approved. If she felt that

⁸ See GD4-1

⁹ Recording of General Division hearing at 7:00 to 10:15.

¹⁰ Recording of General Division hearing at 11:35.

¹¹ Recording of General Division hearing at 12:40.

¹² Recording of General Division hearing at 14:00.

¹³ Recording of General Division hearing at 15:00.

she was entitled to more weeks of benefits, she had an opportunity to make that submission.

[21] I have also considered whether the General Division made an important error of fact by deciding that the Claimant was entitled to one week of benefits in September 2020. The Claimant confirmed at the hearing before the General Division that she applied for the benefits that she received in September 2020.

[22] There was no evidence before the General Division to contradict its finding in this respect. The Claimant doesn't suggest that there is any evidence that was misunderstood or ignored by the General Division. I have reviewed the file and listened to the hearing. I have not found that the General Division ignored or misunderstood any evidence.

[23] The Claimant had an opportunity to fully present her case at the General Division. The General Division is not required to seek out evidence that is not found in the Commission file and that the parties have not brought to the Tribunal.¹⁴

[24] I have found that there is no arguable case that the General Division made an error of jurisdiction or based its decision on an important error of fact. I am not satisfied that the appeal has a reasonable chance of success.

[25] I have also considered other grounds not raised by the Claimant. After reviewing the record and listening to the hearing before the General Division, I have not identified any errors of law. There is no arguable case that the General Division failed to provide a fair process.

Conclusion

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

Melanie Petrunia
Member, Appeal Division

¹⁴ See *T. W. v. Minister of Employment and Social Development*, 2018 SST 58