



Citation: *JB v Canada Employment Insurance Commission*, 2022 SST 1022

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 10, 2022
(GE-22-1182)

Tribunal member: Pierre Lafontaine

Decision date: October 14, 2022

File number: AD-22-388

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance benefits. The Claimant had several Records of Employment (ROE) on file with the Respondent (Commission) but there was no ROE from the Claimant's job working as a security guard. The Claimant told the Commission he did not receive and was not able to get a ROE from his employer. The Commission attempted to contact the employer, without success.

[3] The Commission gathered information from the Claimant regarding his job as a security guard and estimated how many hours of employment he had to create an interim ROE, until they could get an actual one from the employer.

[4] The Commission, using the interim ROE from the Claimant's security job, the other ROEs on file, and giving him the 300-hour credit under the temporary COVID measures, found he had enough hours to qualify for benefits and started a benefit period for the Claimant. He received benefits from December 6, 2020, to November 27, 2021.

[5] In March 2021, the employer whom the Claimant worked for as a security guard issued an official ROE. The Commission determined that the Claimant had not worked enough hours to qualify. It found that the Claimant had 388 hours but needed 420 hours. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[6] The General Division found that since the Claimant was required to have 420 hours of insurable employment in order to qualify for regular employment insurance benefits and that he only had 408 hours, the Claimant did not qualify for benefits and had to repay the benefits received.

[7] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he gave accurate information to the Commission based on his paystubs from the security guard job. The Claimant puts forward that he did nothing wrong and should not have to repay the benefits he received.

[8] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[9] I have no choice but to refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[10] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

Analysis

[11] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[12] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[13] Therefore, before leave can be granted, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Preliminary matters

[14] In the interest of justice, I respectfully requested that the Commission obtain an insurability ruling from the *Canada Revenue Agency* (CRA) regarding the Claimant's employment with the security guard company. The Commission complied with my request.

[15] The CRA ruled that the Claimant had 51 hours of insurable hours with the security guard company for the period of April 9, 2020 to August 21, 2020.¹ The number of hours is consistent with the evidence before the General Division.

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

[16] The Claimant puts forward that he gave accurate information to the Commission based on his paystubs from the security guard company. He did nothing wrong and should not have to repay the benefits he received.

¹ See AD3-3.

[17] The General Division found that since the Claimant was required to have 420 hours of insurable employment in order to qualify for regular employment insurance benefits and that he only had 408 hours, the Claimant was not entitled to all the benefits he received and had to pay them back.

[18] The evidence shows that when the Commission used the hours in the actual ROE sent out by the Claimant's security guard job (51 hours), not the hours they calculated when they made an interim ROE (264 hours), and combined them with his other ROE's and the 300-hour credit from the COVID measures, the Claimant only had 408 hours of employment. He needed 420 hours to qualify. The Claimant must therefore repay the benefits received.

[19] Unfortunately, for the Claimant, the Federal Court of Appeal has clearly established that a claimant who receives an amount without being entitled to it, even as a result of a mistake by the employer or the Commission, is not excused from repaying the amount.²

[20] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

[21] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

² *Lazuno v Canada (Attorney General)*, 2005 FCA 324; If the Claimant wants to request a write-off of his debt, a formal request should be made directly to the Commission so that a decision be rendered on that issue.