



Citation: *JN v Canada Employment Insurance Commission*, 2022 SST 1260

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. N.
Representative: T. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 21, 2022
(GE-22-2737)

Tribunal member: Melanie Petrunia

Decision date: November 12, 2022
File number: AD-22-693

Decision

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

Overview

[2] The Applicant, J. N. (Claimant), established an initial claim for the Employment Insurance Emergency Response (EI-ERB) effective May 17, 2020. The Respondent, the Canada Employment Insurance Commission (Commission) paid the Claimant an initial advance of \$2,000.

[3] The Claimant was required to submit biweekly reports. Due to illness, the Claimant did not file any reports until her representative obtained power of attorney and made a new initial claim effective October 8, 2020. The Commission reactivated the previous claim and paid the Claimant one week of EI-ERB benefits.

[4] The Claimant's representative was unaware that she had filed the claim in May 2020. He told the Commission that she had developed early-onset Alzheimer's during that time.

[5] The Commission disentitled the Claimant because she did not file any bi-weekly reports to account for the EI-ERB benefits paid to her. This resulted in a \$2,000 overpayment from the advance.

[6] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that, under the special measures introduced during the pandemic, a claim had to be made before December 2, 2020. It decided that the Claimant was not entitled to the EI ERB, since she had not made any claims by this deadline.

[7] The Claimant now wants to appeal the General Division decision to the Appeal Division. However, she needs permission for her appeal to move forward. She argues that the General Division made an error of jurisdiction.

[8] 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

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[10] 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

[11] 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

[12] 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;³ or

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.

d) made an error in law.⁴

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

There is no arguable case that the General Division made an error of jurisdiction

[14] The General Division had to decide if the Claimant was entitled to the \$2,000 advance EI-ERB payment she received.

[15] In its decision, the General Division reviewed the criteria in the Employment Insurance Act (EI Act) that an applicant must meet to qualify for the EI-ERB.⁶ Among those criteria is the need to submit bi-weekly reports confirming their unemployment. The EI Act also requires that all claims be made before the December 2, 2020, deadline.⁷

[16] The General Division found that the Claimant made her initial claim in May 2020. The Commission issued an initial advance of \$2,000 as provided for in the legislation.⁸ This advance represents four weeks of benefits, intended to be recovered later in a claimant's benefit period. The General Division found that these weeks must be accounted for with claims for weeks of unemployment.⁹

[17] The General Division reviewed the Claimant's circumstances. She was diagnosed with early-onset Alzheimer's.¹⁰ Her husband, who is also her representative,

⁴ This paraphrases the grounds of appeal.

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

⁶ General Division decision at para 10.

⁷ General Division decision at para 11.

⁸ See sections 153.7(1.1) of the EI Act

⁹ General Division decision at para 14.

¹⁰ General Division decision at para 20.

obtained power of attorney to manage her affairs in October 2020.¹¹ Once authorized, he made an initial claim for EI sickness benefits on her behalf. When he received an access code he was able to access the Claimant's on-line account and first learned about the earlier claim and the overpayment. This was in February 2021.¹²

[18] The Claimant's representative tried to antedate the claims and submit reports to account for her weeks of unemployment but the Commission denied the antedate. The General Division noted that the antedate decision was not part of the appeal it was deciding.¹³ The Claimant's representative said that she was unemployed during the relevant period and would have been entitled to receive the EI-ERB if it were not for her medical condition and failure to file reports.¹⁴

[19] The General Division acknowledged the Claimant's very unfortunate circumstances, but found that the law clearly states that claims cannot be made after December 2, 2020.¹⁵

[20] The Claimant argues that the General Division made an error of jurisdiction. She says that this situation deserves compassion and discretion. The Claimant disagrees with the General Division's finding that the law does not allow for any discretion. The Claimant provides examples of other situations in which discretion was exercised by a Crown Attorney or a Judge.¹⁶

[21] The Claimant's representative also argues that government phone lines were busy in the fall of 2020. He had difficulty getting in touch with Service Canada. He adds that he is hard of hearing and believes that he misunderstood instructions.¹⁷ The Claimant's representative is asking for compassion and understanding of her situation.

¹¹ General Division decision at para 21.

¹² General Division decision at para 22.

¹³ General Division decision at para 23.

¹⁴ General Division decision at para 24.

¹⁵ General Division decision at para 28.

¹⁶ AD1-5

¹⁷ AD1A

[22] I have reviewed the arguments and submissions in the Claimant's application for leave to appeal and emails to the Tribunal. The Claimant's circumstances are sympathetic and I can understand her representative's frustration.

[23] The Claimant and her representative are asking for compassion and discretion because she would have filed reports and been entitled to benefits were it not for her illness.

[24] Unfortunately, for the Claimant, I find that her arguments have no reasonable chance of success. The General Division decided the issue it had to decide in the appeal. There is no arguable case that the General Division made an error of jurisdiction.

[25] The General Division understood and considered the Claimant's health condition and the efforts her representative made to address the situation. However, it found that the legislation is clear that claims for the EI-ERB must have been made by December 2, 2020. The General Division decided the issues that it had to decide in the appeal, and did not fail to address any issues that it was required to decide.

[26] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹⁸

[27] The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. The General Division properly cited and applied the law. Finally, the Claimant has not argued that the General Division acted unfairly in any way.

¹⁸ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[28] I have decided that the Claimant's appeal has no reasonable chance of success. For this reasons, I am refusing permission to appeal. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division