Citation: *TP v Canada Employment Insurance Commission*, 2023 SST 187

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	T. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 1, 2022 (GE-22-2070)

Tribunal member:	Stephen Bergen
Decision date:	February 20, 2023
File number:	AD-22-960

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] T. P. is the Applicant for leave to appeal and the benefit claimant. I will refer to him as the Claimant. The Claimant applied for Employment Insurance (EI) benefits and established a benefit period that began November 10, 2019. While he was waiting for a decision from the Respondent, the Canada Employment Insurance Commission (Commission), the Claimant applied for the Canada Emergency Relief Benefit (CERB). He received three months of CERB payments.

[3] According to the Claimant, the Commission confirmed that the Claimant was entitled to benefits in June 2020. It told him he does not need to continue applying for CERB.[1] The Claimant says that his ability to apply online for CERB benefits was deactivated. He also says that his ability to report online to receive EI benefits was also deactivated. According to the Claimant, his EI account was eventually reinstated, and he began to receive EI benefits. The Commission states that he received the Emergency Relief Benefit (EI-ERB) from June 7, 2020, to October 3, 2020.

[4] Later, the Commission reconsidered its original decision. It cancelled the benefit period that it had established effective November 10, 2019. This resulted in an overpayment. The Claimant disagreed with the overpayment and appealed to the General Division.

[5] In October 2020, the Claimant ran out of EI-ERB Benefits. He applied for regular EI benefits on October 26, 2020.[2] At the time that he applied, the Commission could consider his hours of insurable employment from a qualifying period that ran all the way from March 31, 2019, to October 10, 2020. The Claimant qualified for regular EI benefits

---

[1] See GD3-68.
[2] See GD3-45 for confirmation that application was submitted.

with the insurable hours he had accumulated in this period. He received 31 weeks of benefits from October 11, 2020, to May 15, 2020.

[6] However, the General Division had moved forward with the Claimant's appeal and the appeal was allowed. The General Division agreed that the Claimant's benefit period should not have been canceled and it voided most of the overpayment. However, the reinstatement of the original benefit period had other consequences. It affected the Claimant's ability to qualify for the regular benefits that he received from October 11, 2020, forward.

[7] According to the *Employment Insurance Act* (EI Act), the qualifying period is the **shorter o**f a) the 52-week period immediately before the beginning of a benefit period or, b) the period beginning on the first day of an immediately preceding benefit period.[3] Because of the challenges of Covid, the government brought in a special provision. This provision extended the qualifying period by 52 weeks. The extension only applied if situation (a) was the shorter period.[4]

[8] In the Claimant's case, the period from the start of the previous benefit period (November 10, 2019) to October 10, 2020, was shorter than the 52 weeks in (a). The special 28 - week extension to the qualifying period could not apply.

[9] This meant that the Claimant's qualifying period was limited to the period between November 10, 2019, and October 10, 2020. The Commission could not use any of the Claimant's hours of insurable employment from before November 10, 2019, to help him to qualify.

[10] The new qualifying period ran from November 10, 2019, to October 10, 2020. The Commission found that the Claimant had only 52 hours of insurable employment in this qualifying period. It added another 300 additional hours because of another special

[3] See section 8(1) of the EI Act.
[4] See section 153.18 of the EI Act.

provision of the EI Act.[5] That meant that the Claimant had 352 hours to use to qualify for benefits.

[11] The Claimant's employer had paid him some severance, but the Canada Revenue Agency had ruled that it was insurable employment. The Commission was required to follow the ruling, so the severance payments did not increase the Claimant's insurable hours.

[12] The Claimant did not have enough hours of insurable employment to qualify. He needed 420 hours of insurable employment to qualify for benefits. He had only 352 hours in the newly calculated qualifying period. As a result, the Commission reconsidered its earlier decision to pay regular benefits as of October 11, 2020, and it declared a new overpayment of $17,429.00.

[13] The Claimant appealed this to the General Division, but the General Division dismissed his appeal. It agreed with the Commission that the Claimant did not have enough hours to qualify for benefits in October 2020.

[14] The Claimant is now asking for leave to appeal the General Division decision to the Appeal Division.

[15] I am refusing leave to appeal. There is no arguable case that the General Division acted in a way that was unfair, that it made an error of jurisdiction, or that it made an important error of fact.

Issues

[16] Did the General Division act in a way that was procedurally unfair?

[17] Did the General Division make an error of jurisdiction by failing to consider the Claimant's eligibility for CERB, or any other issue that it was required to consider?

[5] See section 153.17(1)(b) of the EI Act.

[18] Did the General Division make an important error of fact by failing to consider how his benefits were affected by the cancellation of his Canada Emergency Relief Benefit (CERB) or that a Commission agent was responsible for the loss of his CERB entitlement?

I am not giving the Claimant permission to appeal

[19] For the Claimant's application for leave to appeal to succeed, his reasons for appealing must fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[20] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

a) The General Division hearing process was not fair in some way.
b) 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 (error of jurisdiction).
c) The General Division based its decision on an important error of fact.
d) The General Division made an error of law when making its decision.[6]

[21] The Courts have equated a reasonable chance of success to an "arguable case."[7]

Procedural fairness error

[22] On the Application to the Appeal Division form, the Claimant selected "procedural fairness" from the grounds of appeal. He argued that he was concerned about how the cancellation of his CERB affected his entitlement to income support. He also said that

[6] This is a plain language version of the grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[7] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.

the General Division member was only interested in whether he had sufficient hours to receive benefits after October 2020.[8]

[23] When a claimant asserts an error of "procedural fairness," the Appeal Division can only concern itself with the fairness of the General Division process. The Claimant may feel that the Commission or one of its agents acted unfairly in cancelling his CERB. He may believe that the Government of Canada administered the various income support benefits in a way that was unfair to the Claimant. However, those concerns do not make out an arguable case that the General Division acted unfairly.

[24] I will presume that the Claimant means to argue that he did not have an opportunity to be heard on the issues that were of concern to him. He seems to believe that the General Division was too focused on whether he had sufficient hours to qualify for benefits in October 2020. In his oral hearing, the Claimant was insistent that the General Division consider how he had been prejudiced by the cancellation of his CERB.

[25] However, the Claimant has not made out an arguable case that the General Division acted unfairly.

[26] The General Division member allowed the Claimant to explain his circumstances and to tell her how the processing of his claim had prejudiced his entitlement to other benefits. She also asked the Claimant to explain how any of this meant that he had sufficient hours within his qualification period to qualify for benefits in October 2020.

[27] However, the Claimant did not present any evidence to suggest that he should be entitled to some extension to his qualifying period, or that the Commission had missed any hours of insurable employment that should have been credited to him.

[28] The General Division is entitled to manage the hearing process. That includes managing time in the hearing. Sometimes this means that a General Division member must put a limit on the presentation of evidence that the member may view as irrelevant to the issues.

---

[8] See AD1-8.

Error of Jurisdiction

[29] The Claimant did not select "error of jurisdiction" when he applied for leave to appeal. However, he has consistently raised concerns with his CERB entitlement. The General Division did not decide whether a Commission agent made a mistake and cancelled his CERB, and it did not decide if he should have continued to receive CERB.

[30] However, there is no arguable case that the General Division made an error of jurisdiction by not considering and deciding these issues.

[31] A Commission agent may have made a mistake with the Claimant's CERB. However, the Claimant's qualification and entitlement to EI benefits must still be determined according to the EI Act and Regulations. The Commission agent's mistake does not change that. The General Division did not have to decide how the Claimant came to the place where he was receiving EI-ERB instead of CERB. That was not an issue in the reconsideration decision before the General Division.

[32] The General Division also had no jurisdiction to decide whether the Claimant could, or should, have been entitled to continuing CERB from June 7, 2020, to September 26, 2020,[9] or to the separate Canada Recovery Benefit (CRB) from September 27, 2020, to June 19, 2021.[10]

[33] The General Division only had jurisdiction to consider the issues arising from the reconsideration decision that was on appeal. The reconsideration decision was a decision that the Claimant did not have sufficient hours in his qualifying period to establish a new benefit period in October 2020. This was the only issue that the General Division could consider or decide.

[34] It is clearly frustrating to the Claimant that the General Division refused to consider events that may have deprived him of alternate benefits and eventually led him

[9] GD6-1.
[10] GD6-2.

to his present difficulty with a large overpayment. Unfortunately, there is no arguable case that the General Division had the jurisdiction to consider those other concerns.

Important error of fact

[35] The Claimant has also asserted that the General Division made an "important error of fact."

[36] For the General Division to make an important error of fact, it would have to base its decision on some finding that ignored or misunderstood relevant evidence, or that does not follow logically from the available evidence.[11]

[37] The General Division cannot rely on evidence that is not relevant to its decision, and it does not need to refer to it. I am not sure what the Claimant considers to be the important error of fact in the General Division decision.

[38] The General Division confirmed the qualifying period and found that the Claimant had insufficient hours in that period to qualify for benefits. The Claimant has not suggested that the Claimant ignored or misunderstood evidence that could have been relevant to this finding, or to the General Division decision. The Claimant's belief that that he would have been entitled to more benefits if the Commission did not cancel his CERB would not have been relevant.

[39] It appears that the Claimant is principally concerned with the actions of the Commission—not the actions of the General Division. He believes that the Commission misunderstood his situation or ignored his circumstances when it cancelled his CERB. He believes that he could have avoided the overpayment if he had received a different mix of the various benefits that were available.

---

[11] Section 58(1)(c) of the DESD Act says that the General Division makes this type of error if it has "based its decision on an erroneous finding of fact that it made 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.

[40] He may be right, but—like the General Division—I have no ability to review the actions of the Commission or the Canada Revenue Agency (which is legally responsible for administering both the CERB and the CRB).

[41] The Claimant has no reasonable chance of success.

Conclusion

[42] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division