



Citation: *FL v Canada Employment Insurance Commission*, 2023 SST 493

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: F. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 7, 2023
(GE-22-3530)

Tribunal member: Pierre Lafontaine

Decision date: April 24, 2023

File number: AD-23-232

Decision

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

Overview

[2] The Applicant (Claimant) applied for employment Insurance (EI) benefits on April 13, 2020. He collected 3 weeks of Emergency Response Benefit (ERB) before returning to work. He was also advanced \$2,000 worth of ERB payments.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not collect ERB long enough, so he must repay the advance he received because it represents weeks of ERB for which he is not eligible. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant was paid 3 weeks of ERB. It found that the Claimant was overpaid \$2000 worth of ERB payments. The General Division concluded that the Claimant had to repay the \$2,000 ERB advance he was not eligible for.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he received ERB for which he did not apply for. He did not know that he was eligible for those benefits and would have to return them in the future. The Claimant submits that he applied for EI benefits. He feels that it is unfair to have received ERB rather than EI benefits.

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

[7] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Analysis

[9] 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.

[10] 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.

[11] Therefore, before I can grant leave, 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.

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

[12] The Claimant submits that he received ERB for which he did not apply for. He did not know that he was eligible for those benefits and would have to return them in the future. The Claimant submits that he applied for EI benefits. He feels that it is unfair to have received ERB rather than EI benefits.

[13] Before the General Division, the Claimant agreed that he received 3 weeks of ERB payments. He also did not dispute the \$2000 ERB advance.

[14] The Claimant completed an application for EI benefits on April 13, 2020.¹

[15] As stated by the General Division, the law states that for the period beginning on March 15, 2020, to September 26, 2020, no benefit period is to be established with respect to regular EI benefits. There is no option in the law for the Claimant to decline ERB and get regular EI benefits instead, or to opt-out of the ERB.²

[16] As determined by the General Division, this means the Claimant is only eligible for 3 weeks of ERB (from April 12 to May 2, 2020) and he was paid for those 3 weeks. The \$2,000 ERB advance represents 4 weeks of ERB above and beyond the 3 weeks the Claimant is eligible for.

[17] The law clearly says a claimant must repay any weeks of ERB they got for which they are not eligible.³

[18] I must reiterate that the emergency legislation does not allow discrepancy and does not give the Tribunal discretion in its application.⁴ I understand that the Claimant feels that it is unfair and financially detrimental to him to have received ERB rather than EI benefits. The fact remains that neither the General Division nor the Appeal Division have the authority to deviate from the rules Parliament established for granting benefits.

¹ See GD3-14.

² Section 153.8(5) of the *Employment Insurance Act* says that no benefit period is to be established for any benefits referred to in paragraph 153.5(3)(a) of the *Employment Insurance Act*, and paragraph 153.5(3)(a) includes EI regular benefits

³ See section 153.1301 of the *Employment Insurance Act*.

⁴ *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[19] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division