



Citation: *PB v Canada Employment Insurance Commission*, 2023 SST 647

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: P. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 16, 2023
(GE-22-3696)

Tribunal member: Pierre Lafontaine

Decision date: May 29, 2023

File number: AD-23-308

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits effective March 6, 2022. On his application for EI benefits, the Claimant stated that he was receiving a pension from the *Canada Pension Plan* (CPP) as of November 1, 2020. The Respondent (Commission) provided the Claimant with a weekly EI benefit rate of \$638 from March 3, 2022, to August 27, 2022.

[3] The Claimant had previously received CPP beginning on November 1, 2020, in the amount of \$1298 monthly (2020 Pension). He cancelled the 2020 CPP Pension after two months because he started a new job in December 2020. The Commission initially considered the 2020 Pension as an exempt pension because it was not considered as earnings and was therefore an exemption under the *Employment Insurance Regulations* (EI Regulations).

[4] Starting on January 1, 2022, the Claimant started again to receive a monthly CPP pension totalling \$1298. As of April 1, 2022, his CPP pension increased to a total of \$1317 a month (2022 Pension).

[5] When the Commission became aware that the 2020 Pension was cancelled and the 2022 Pension began only on January 1, 2022, the Commission changed its calculations. It determined that the 2022 Pension was considered earnings and was not exempt under the EI Regulations. The Commission recalculated the Claimant's benefits and determined that there had been an overpayment of \$3496.

[6] Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[7] The General Division determined that the 2022 Pension is considered earnings and that they were allocated correctly in accordance with the law.

[8] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division made an important error of fact.

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

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

Issue

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

Analysis

[12] 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.

[13] 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.

[14] 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?

[15] The Claimant submits that he had applied for EI benefits stating all his income. The Commission did not take this into account until August 2022. He started to receive benefits in April 2022. His CPP was increased in August 2022 which led the system to alert the Commission that he was receiving CPP (He had reported his CPP earnings in his initial EI application). He received eight net EI payments of \$1176 from April 12th to Aug 30th, then the reduced benefits of \$936 started. He disputes the amount of \$3496 owing. There was a glitch in the system, and he should not pay for it. He is hoping to have the overpayment reduced or written off.

[16] The Claimant applied for EI benefits effective March 6, 2022. In his application, he mentioned that his CPP pension started January 1, 2020. The Commission established an EI benefit rate of \$638 from March 3, 2022, to August 27, 2022.

[17] On January 1, 2022, the Claimant started again to receive a monthly CPP pension totalling \$1298. As of April 1, 2022, his CPP pension increased to a total of \$1317 a month payable as of January 1, 2022 (2022 Pension).

[18] The CPP benefits that the Claimant received constitute earnings, and these benefits were payable on a periodic basis as of January 1, 2022. As a result, they had to be allocated for the period for which they were payable.¹

[19] As stated by the General Division, the 2022 Pension is not exempt because the Claimant does not have enough insurable hours from the start of that Pension (January 1, 2022), to when he stopped working (March 4, 2022).²

¹ Mosley v Canada (Attorney General), 2017 FCA 56.

² See section 35(7)(e)(ii) of the *Employment Insurance Regulations*.

[20] A weekly amount of \$304 ($\1317×12 months divided by 52 weeks) was considered earnings, and was correctly applied against the claim from March 6, 2022, to the end of the claim. The overpayment was calculated until August 27, 2022.³

[21] The Federal Court of Appeal has clearly and constantly decided that an applicant who receives money for which he is not entitled to, even following a mistake of the Commission, is not excused from having to repay it.⁴

[22] 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.

[23] 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 is rendered on that issue. The Tribunal has no jurisdiction to write-off a debt.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

³ See AD3: overpayment explained in detail.

⁴ *Lanuzo c Canada (Attorney General)*, 2005 FCA 324.