



Citation: *NF v Canada Employment Insurance Commission*, 2023 SST 598

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: N. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 10, 2023
(GE-22-3295)

Tribunal member: Janet Lew

Decision date: May 16, 2023

File number: AD-23-261

Decision

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

Overview

[2] The Applicant, N. F. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that he had received an advance of Employment Insurance Emergency Response Benefits (EI-ERB). The General Division found that the Claimant received more benefits than he was entitled to get, so he had to repay that amount.

[3] The Claimant argues that the General Division made an important mistake about the facts. He denies that he ever applied for the Canada Emergency Response Benefit (CERB). He says that he applied for Employment Insurance benefits. He says it is unfair that he is being asked to repay CERB because he says he never asked for or received CERB.

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

Issue

[6] Is there an arguable case that the General Division made an important mistake about the facts?

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Section 58(2) of the *Department of Employment and Social Development Act*.

I am not giving the Claimant permission to appeal

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success.³ A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.⁴

[8] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

Is there an arguable case that the General Division made factual errors?

[9] The Claimant argues the General Division made an important mistake about the facts.

– The Claimant’s arguments at the General Division

[10] In his Notice of Appeal to the General Division, the Claimant stated that he applied for Employment Insurance benefits. He denied that he applied for CERB or that he ever received CERB. He argued that it was “evident that [he] received [Employment Insurance] not CERB or both.”⁵

– The General Division decision

[11] The General Division found that the Respondent, the Canada Employment Insurance Commission, had placed the Claimant on EI-ERB without his permission. But the General Division did not mention CERB, even though the Claimant testified that he had not received any CERB and should not have to repay it. The General Division also did not directly address the Claimant’s arguments that he had not received CERB.

[12] Even so, the Claimant does not have an arguable case.

³ Section 58(2) of the *Department of Employment and Social Development Act*.

⁴ Section 58(1) of the *Department of Employment and Social Development Act*.

⁵ See Notice of Appeal, at GD 2-8.

– **The EI-ERB is different from CERB**

[13] It is true that the Claimant never applied for nor received any CERB payments. While that may be, contrary to the Claimant's claims, the General Division did not conclude that he had to repay something that he did not receive.

[14] The General Division found that the Claimant had received a \$2,000 advance in benefits, but the General Division found that this was an advance of EI-ERB payments--not CERB payments.

[15] It would have been helpful if the General Division had explained that there is a difference between EI-ERB and CERB. The two acronyms look similar, so it can be very confusing and easy to mix up.⁶ As the Claimant noted, CERB was intended for those whose income was not insurable. The EI-ERB on the other hand was intended for those with insurable income. This distinction appears in the hearing file,⁷ though it may not be evident.

– **The Claimant denies that he got any form of Emergency Response Benefits**

[16] The Claimant argues that the General Division made a mistake that he received any emergency response benefits at all.

[17] Even if the Claimant mistakenly refers to CERB, he still says that he did not ask for any form of emergency response benefits, whether it falls under EI-ERB or CERB. He maintains that he had applied for just Employment Insurance regular benefits.

[18] However, the Claimant applied for Employment Insurance benefits in April 2020.⁸ The law stated that for claims made at that time, they were deemed to have been a claim for EI-ERB under Part VIII.4 of the *Employment Insurance Act*.

⁶ To further confuse matters, Employment and Social Development Canada's Notice of Debt and communications referred to the advance payment as CERB payments, at GD 3-131, 3-132, and 3-148. But, as the Canada Employment Insurance Commission explained in its Representations to the Social Security Tribunal, at GD 4-2, for simplicity, it communicated both programs as being the same, even though the Claimant received the EI-ERB.

⁷ See Attestation Certificate, at GD 3-18.

⁸ See Claimant's Application for Employment Insurance benefits, at GD 3-15.

[19] Under section 153.1310 of the *Employment Insurance Act*, claimants were automatically treated as if they applied for the EI-ERB,⁹ even if they wanted Employment Insurance regular benefits instead. Claimants simply were not given any choice about which benefit they could get.

[20] In other words, it did not matter that the Claimant had not specifically applied for EI-ERB. The only benefits payable to the Claimant at that time was the EI-ERB. Indeed, the evidence shows that the Claimant received the EI-ERB. So, the General Division did not make a factual error when it found that the Claimant had received EI-ERB payments.

[21] Despite the Claimant's denials that he got any form of Emergency Response Benefits, the evidence shows that he received EI-ERB.

– The Claimant denies that he received an advance of \$2,000

[22] The Claimant argues the General Division made a mistake when it found that he had received an advance of \$2,000 to which he was not entitled to get.

[23] The General Division found that the Claimant had not provided any evidence to support his claims. The General Division found that the evidence showed that the Claimant had received an advance of four weeks of benefits. This was supported by the Claimant's own evidence.¹⁰ The General Division also found that the Claimant had also received 10 weeks of EI-ERB. This totalled 14 weeks of benefits.

[24] Employment and Social Development Canada provided an itemized statement of benefits paid that showed that the Claimant received the equivalent of 14 weeks of benefits. The General Division was entitled to accept this evidence. As it was, there was no contradictory documentary evidence to suggest that the Claimant had not received 14 weeks of benefits.

⁹ Section 153.1310 of the *Employment Insurance Act*.

¹⁰ Claimant's banking statement, at GD 3-144.

[25] Based on the Claimant's biweekly reports, the General Division correctly calculated that the Claimant was entitled to 10 weeks of EI-ERB.¹¹

[26] Hence, as the Claimant was entitled to 10 weeks and had been paid 14 weeks, this resulted in an overpayment of 4 weeks of benefits. The overpayment arose from the advance payments, as the evidence showed.

Conclusion

[27] I am not satisfied that the appeal has a reasonable chance of success. While the Claimant did not receive CERB, the evidence shows that he received EI-ERB payments, including an advance of \$2,000 that led to an overpayment. The evidence supports the General Division's findings.

[28] Permission to appeal is refused. This means that the appeal will not proceed.

Janet Lew
Member, Appeal Division

¹¹ The Claimant filed biweekly reports, claiming 10 weeks of benefits.