



Citation: *MG v Canada Employment Insurance Commission*, 2023 SST 795

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 19, 2023
(GE-23-1016)

Tribunal member: Candace R. Salmon

Decision date: June 16, 2023

File number: AD-23-580

Decision

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

Overview

[2] M. G. is the Claimant. He was laid off from his job. His employer paid him \$47,099.66 in severance and vacation pay. He applied for regular employment insurance (EI) benefits when he was laid off from work.

[3] The Canada Employment Insurance Commission (Commission) considered the vacation and severance pay he received to be earnings that had to be allocated to certain weeks in his EI claim. The Claimant doesn't dispute the allocation of his severance pay but disagrees with the allocation of his vacation pay.

[4] The General Division decided that the vacation pay had to be allocated starting in the week of the layoff, November 27, 2022.

[5] The Claimant disputes this finding. He believes that the vacation pay should be allocated to the time it was earned, when he was still working, not to the time when he was laid off.

[6] The Claimant wants to appeal the General Division decision to the Appeal Division. He needs permission for the appeal to move forward.

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

Issues

[8] Is there an arguable case that the General Division violated procedural fairness?

[9] Is there an arguable case that the General Division made an error of fact when it decided to allocate the Claimant's vacation pay starting from the first week of his layoff?

I am not giving the Claimant permission to appeal

[10] An appeal can only proceed if the Appeal Division gives permission to appeal.¹ I must be satisfied that the appeal has a reasonable chance of success.² This means that there must be some arguable ground upon which the appeal might succeed.³

- The possible grounds of appeal to the Appeal Division are that the General Division did at least one of the following: proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error of law
- based its decision on an important error of fact⁴

[11] There is no arguable case that the General Division made one of these errors. So, I must refuse permission to appeal. This means the appeal will not proceed.

The Claimant's appeal has no reasonable chance of success

[12] The Tribunal must follow the law, including the *Department of Employment and Social Development Act* (DESD Act). It provides rules for appeals to the Appeal Division. The Appeal Division does not provide an opportunity for the parties to re-argue their cases. It determines whether the General Division made an error under the law.

There's no arguable case that the General Division violated procedural fairness

[13] Generally speaking, procedural fairness is concerned with the rights of the parties to know the case they have to meet, with having a fair and reasonable opportunity to present their case, and with receiving a decision that is free from bias or the reasonable apprehension of bias.

¹ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 58(2) of the DESD Act.

³ See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁴ See section 58(1) of the DESD Act.

[14] The Claimant selected procedural fairness as a ground of appeal on his application to the Appeal Division. He submitted that the General Division didn't consider all his evidence and, "failed to consider the merits of my case and disregarded the evidence and arguments I presented."⁵

[15] The General Division decision explains the law, which requires that vacation pay be allocated to the time of the layoff, not the time it was earned.⁶ While the General Division decision doesn't mention everything the Claimant said, it is not required to refer to every piece of evidence in its reasons. It is presumed to have considered all the evidence.⁷

[16] The Claimant says that the General Division didn't consider his arguments and didn't take his perspective into account. The General Division noted that the Claimant didn't dispute that his vacation pay was earnings.⁸ Once that finding was made, the General Division had to apply the law to the facts. Since the law says that vacation pay must be allocated in a certain way, the Claimant's circumstances and arguments that it should be allocated in a different way were not relevant. For this reason, I am satisfied that there is no arguable case that the General Division failed to deal with the Claimant's arguments.

There's no arguable case that the General Division made an error of fact when it decided to allocate the Claimant's vacation pay starting from the first week of his layoff

[17] The law says that an error of fact happens when the General Division, "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."⁹ A perverse or capricious finding of fact is one where the finding contradicts or isn't supported by the evidence in the appeal.¹⁰

⁵ See page AD1-9.

⁶ See General Division decision at paragraph 22.

⁷ See *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10.

⁸ See General Division decision at paragraph 13.

⁹ See section 58(1)(c) of the DESD Act.

¹⁰ See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 6.

[18] The Claimant selected error of fact as one of the grounds for the appeal. He submits that the General Division ignored relevant facts and circumstances that he presented. He says that he chose to work instead of taking a vacation so that he could provide for his family during difficult circumstances. He adds that the vacation pay was income earned while he was working in November 2022, so it should not be used to “penalize” his EI claim in December 2022.

[19] He also says that it is important to understand that the monies received from the employer were not a bonus or additional payment but were paid to compensate for vacation days that he was entitled to receive. He stresses that the vacation income was earned during his employment, not during the period when he was laid off.

[20] The General Division did not suggest that the vacation pay was a bonus or additional payment. It recognized that the monies paid to the Claimant related to severance and vacation pay.¹¹ There is no arguable case that the General Division made an error of fact, because its findings are supported by the evidence on the file.

There’s no arguable case that the General Division made a reviewable error

[21] The Claimant doesn’t agree that his vacation pay should be allocated to the week when he was laid off from his job. He says that’s unfair, because he earned the money while working.

[22] While I recognize the Claimant’s frustration, disagreeing with the law is not a ground of appeal. Vacation pay is allocated under the provisions of the *Employment Insurance Regulations* (EI Regulations). The EI Regulations say that vacation pay must be allocated to a number of weeks beginning with the week of the layoff.¹² Explanations around the Claimant’s use of vacation days, his financial situation, and family circumstances are not relevant to making a decision about the allocation of his vacation pay.

¹¹ See General Division decision at paragraphs 17 and 20.

¹² See *Employment Insurance Regulations*, section 36(9).

[23] I reviewed the documents in the file, examined the decision under appeal, and satisfied myself that the General Division did not misinterpret or fail to properly consider any relevant evidence.¹³

Conclusion

[24] I am not satisfied that this appeal has a reasonable chance of success. For that reason, permission to appeal is refused.

[25] This means that the appeal will not proceed.

Candace R. Salmon
Member, Appeal Division

¹³ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.