



[TRANSLATION]

Citation: *SG v Canada Employment Insurance Commission*, 2023 SST 1143

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 7, 2023 (GE-22-4275)

Tribunal member: Pierre Lafontaine

Decision date: August 22, 2023

File number: AD-23-673

Decision

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

Overview

[2] The Applicant (Claimant) worked as an employee for a fisher. He stopped working on July 3, 2021. He applied for benefits on October 3, 2021. He received regular benefits until the week of April 24, 2022.

[3] In April 2022, the Claimant contacted the Respondent (Canada Employment Insurance Commission) to say that he was going to become a self-employed fisher starting May 2, 2022. He asked the Commission to end his benefit period for regular benefits. It told him that it was not the right thing to do and that he should keep filing his reports.

[4] The Commission later determined that the Claimant was a self-employed fisher. It found that the Claimant was working full work weeks. It told the Claimant that it could not pay him Employment Insurance (EI) benefits as of May 2, 2022, because he was not unemployed. On reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[5] The General Division found that the Claimant was working full work weeks as of May 2, 2022. As a result, it found that he could not receive benefits because there had been no week of unemployment. It also found that the Claimant could not end his regular benefits in favour of fishing benefits.

[6] The Claimant is now asking the Appeal Division for permission to appeal the General Division's decision.

[7] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[8] I am refusing permission to appeal because the Claimant has not raised a

ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[10] 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 the following:

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.

[11] An application for permission 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 at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[12] I will grant permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] The Claimant argues that he never claimed to be unemployed after May 2, 2022. Instead, he says he asked the Commission to stop paying him regular benefits in April 2022 before he became self-employed. An agent then gave him poor advice saying that

it was not the right thing to do and that he should keep filing his reports. He decided to stop filing his reports thinking that his regular benefits would simply be cancelled. He argues that he surely has the right to end his benefits whenever he wants.

[14] As the General Division noted, so long as a fisher is **entitled** to benefits from regular insurable earnings, they do not qualify for fishing benefits.¹

[15] Section 8(7) of the *Employment Insurance (Fishing) Regulations* clearly states that, to qualify for fishing benefits, a person must show that they are not entitled to regular benefits.² In this case, the Claimant was still entitled to regular benefits for another six weeks after April 24, 2022.

[16] Ending regular benefits in April would not have changed the fact that the Claimant did not qualify for fishing benefits because his entitlement to regular benefits for 35 weeks was still in effect.

[17] While I sympathize with the Claimant's situation, the law unfortunately does not allow any discrepancy and gives the Tribunal no discretion to disregard the law to give him benefits.³

[18] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[19] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

¹ *Canada Employment Insurance Commission v JF*, 2015 SSTAD 941.

² See section 7 of the *Employment Insurance Act*.

³ *Canada (Attorney General) v Lévesque*, 2001 FCA 304.