



[TRANSLATION]

Citation: *MH v Canada Employment Insurance Commission*, 2023 SST 1337

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 28, 2023 (GE-23-1345)

Tribunal member: Pierre Lafontaine

Decision date: October 4, 2023

File number: AD-23-844

Decision

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

Overview

[2] The Applicant (Claimant) established a benefit period effective November 21, 2021. He has retroactively received pension income from the Quebec Government and Public Employees Retirement Plan since October 2021. He has also received a pension under the Quebec Pension Plan since January 2022.

[3] The Respondent (Commission) decided that the pension income is earnings and that the earnings should be allocated at a rate of \$274 per week for the period from November 21, 2021, to January 1, 2023. This allocation created an overpayment of \$4,577.

[4] The Claimant asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the pension amounts that the Claimant received are earnings and that these earnings have to be allocated to his benefit periods as of November 21, 2021, in the manner determined by the Commission.

[6] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. He argues that he was misled by the Commission. He argues that an agent told him that the retroactive amounts would not be included in calculating his benefits. He recorded the interview. He wants a review of the General Division decision and compensation from the Commission for not mentioning the rules.

[7] 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

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

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 the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue 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 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.

[11] I will give 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?

[12] The Claimant argues that he was misled by the Commission. He argues that an agent told him that the retroactive amounts would not be included in calculating his

benefits. He recorded the interview. He wants a review of the General Division decision and compensation from the Commission for not mentioning the rules.

[13] I see no reviewable error in the decision of the General Division, which found that the pension amounts that the Claimant received are earnings and that these earnings have to be allocated to his benefit periods as of November 21, 2021, in the manner determined by the Commission. As the General Division noted, the Claimant had not accumulated enough hours since he started receiving his pension for the pension not to be considered earnings.

[14] Unfortunately for the Claimant, case law from the Federal Court of Appeal has clearly established that an amount received without entitlement, even as a result of a mistake by the Commission, does not make the claimant entitled to it or excuse them from having to repay it.¹

[15] In addition, the Tribunal does not have jurisdiction to order compensation or relief for any damages that the Claimant has suffered because of the Commission. It is well established that this kind of issue must be debated in another forum.²

[16] After reviewing the appeal file, the General Division decision, and the Claimant's 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

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

Pierre Lafontaine
Member, Appeal Division

¹ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324; and *Buors*, 2002 FCA 372.

² See *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95; *DB v Canada Employment Insurance Commission*, 2021 SST 84; *DG v Canada Employment Insurance Commission*, 2019 SST 1327; and *TT v Canada Employment Insurance Commission*, 2018 SST 43.