



[TRANSLATION]

Citation: *CP v Canada Employment Insurance Commission*, 2023 SST 1321

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
August 30, 2023 (GE-23-30)

Tribunal member: Pierre Lafontaine

Decision date: October 4, 2023

File number: AD-23-837

Decision

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

Overview

[2] From March 22, 2021, to April 1, 2022, the Applicant (Claimant) worked as an administrative assistant for her employer and stopped working because of an illness or injury.

[3] On April 9, 2022, she made an initial claim for benefits. A benefit period was established effective April 3, 2022. On June 19, 2022, a notice of debt was sent to the Claimant, since her weekly benefit rate was set at \$413 instead of \$638.

[4] The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the Commission correctly established the Claimant's weekly benefit rate. It found that the Commission was justified in asking her to repay the amount of money she was overpaid in benefits for the relevant weeks.

[6] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. She argues that she is not challenging the corrected weekly benefit rate. She says that the Commission agent used two Records of Employment (ROE) to calculate her initial benefit rate when she had told it from the beginning that they were fraudulent. She argues that the Commission should be responsible for its agent's administrative error. She argues that she cannot afford to pay back the overpayment.

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

[11] 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?

[12] The Claimant argues that she is not challenging the corrected weekly benefit rate. She says that the Commission agent used two ROEs to calculate her initial benefit rate when she had told it from the beginning that they were fraudulent. She argues that

the Commission should be responsible for its agent's administrative error. She argues that she cannot afford to pay back the overpayment.

[13] Following an investigation by the Commission, it was concluded that both ROEs were indeed fraudulent. That changed the Claimant's weekly benefit rate from \$638 to \$413—a difference of \$225. For each of the six weeks the Appellant received \$638 in benefits for the period from April 10, 2022, to May 21, 2022, the total overpayment is \$1,350.

[14] Unfortunately for the Claimant, the case law of the Federal Court of Appeal has clearly established that an amount received without being entitled to it, **even if the Commission made a mistake**, does not make someone entitled to it and does not excuse a claimant from paying back that amount.¹

[15] The Commission has 36 months to reconsider a claim for benefits paid to a claimant. The Claimant applied for benefits which came into effect on April 3, 2022. A notice of debt was sent to the Claimant on June 19, 2022. The Commission reconsidered the Claimant's claim within the time limit set out in the law.²

[16] As the General Division noted, the Tribunal does not have jurisdiction to decide on writing off an overpayment. That authority rests exclusively with the Commission.³

[17] 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.

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

² See section 52 of *the Employment Insurance Act*.

³ See section 56 of *the Employment Insurance Regulations*. The request must be addressed directly to the Commission and not to the Tribunal.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division