



Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 1408

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 20, 2023
(GE-22-2496)

Tribunal member: Melanie Petrunia

Decision date: October 26, 2023

File number: AD-23-532

Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, A. A. (Claimant) applied for sickness benefits on March 30, 2020. Because of amendments to the *Employment Insurance Act* (EI Act), the Claimant received the Emergency Relief Benefit (ERB).

[3] The Claimant continue to receive benefits when she returned to work. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't eligible for any of the benefits she received and had to repay \$9,713.

[4] The Claimant appealed to the Tribunal's General Division. Her appeal was dismissed but the overpayment was reduced to \$8,713. The General Division decided that the Claimant was eligible for the ERB for two weeks, which amounts to \$1,000.

[5] The Claimant now wants to appeal the General Division decision to the Appeal Division, but her application is late.

[6] I am allowing the Claimant an extension of time to file her application for leave to appeal. However, I find that the Claimant's appeal does not have a reasonable chance of success and I am refusing permission to appeal.

Issues

[7] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I extend the time for filing the application?
- c) Does the Claimant raise any reviewable error of the General Division upon which the appeal might succeed?

Analysis

The application was late

[8] The General Division decision was dated March 20, 2023 and the Claimant received it on that day.¹ The Claimant filed her application for leave to appeal on May 14, 2023.²

[9] An application for leave to appeal must be made within 30 days after the General Division decision and reasons are communicated to a claimant.³ In this case, the decision was communicated to the Claimant on March 20, 2023. Thirty days from this date was April 19, 2023. The Claimant filed her application for leave after this date, so it was late.

I am extending the time for filing the application

[10] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.⁴

[11] The Commission in this matter had also made an application for leave to appeal the General Division decision, which has since been withdrawn. In her application for leave to appeal, the Claimant states that she misread the application filed by the Commission and thought that they were representing her. She was not aware that she also had to appeal.⁵

[12] The Claimant says that she filed her application for leave to appeal when the situation was clarified by the Tribunal, and she learned that the Commission's appeal was separate from hers.

¹ AD1-2

² AD1

³ See section 57(1)(a) of the *Department of Employment and Social Development Act*.

⁴ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

⁵ AD1-5

[13] I find that the Claimant has provided a reasonable explanation for filing her application for leave to appeal late. So, I am considering the Claimant's application for leave to appeal.

I am not giving the Claimant permission to appeal

[14] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?⁶

[15] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).⁷

[16] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;⁸ or
- d) made an error in law.⁹

[17] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could

⁶ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

⁷ DESD Act, s 58(2).

⁸ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁹ This paraphrases the grounds of appeal.

argue her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.¹⁰

No arguable case that the General Division erred

[18] In her application for leave to appeal, the Claimant argues that the General Division made an error of law and based its decision on an important error of fact.

[19] The Claimant argues that she believes that she is entitled to the benefits that she received, whether as ERB or the Canada Emergency Response Benefits (CERB). She says that she was under the impression that she was receiving EI at a rate of \$500 per week and was not notified that EI had been “hijacked” by CERB. She says that she was confused by the rules explained at the General Division hearing.¹¹

[20] In its decision, the General Division explained the changes to the EI Act that were made in response to the COVID-19 pandemic.¹² It reviewed the eligibility criteria for the ERB and applied these criteria to the Claimant’s circumstances.¹³

[21] There are two ways that the Claimant can show she is eligible for the ERB:

- First, she has no income for at least seven days in a row within a two-week claim period.¹⁴
- Alternatively, she has no more than \$1,000 in income over a period of four weeks.¹⁵

[22] The Claimant received ERB while working. The General Division had to determine whether the Claimant was eligible for any of the ERB that she received. To make this determination, the General Division had to decide if there were any weeks

¹⁰ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

¹¹ AD1-3

¹² General Division decision at paras 9 to 11.

¹³ General Division decision at paras 12 to 15.

¹⁴ See section 153.9(1) of the *Employment Insurance Act*.

¹⁵ See section 153.9(4) of the *Employment Insurance Act*.

when the Claimant did not work and what her income was in each two-week period while she was receiving ERB.

[23] The General Division accepted the income that the Claimant had reported for each week in a chart that she gave the Commission.¹⁶ It found that the Claimant was entitled to ERB for the two-week period from April 29 to May 9, 2020 because she had seven consecutive days in this period without work or income.¹⁷ This reduced the Claimant's overpayment by \$1,000.

[24] Based on the income reported by the Claimant, the General Division found that the Claimant was not entitled to any additional ERB under either of the paths to eligibility. She did not have any other seven-day periods without work or income and her income for each four-week period exceeded \$1,000.¹⁸

[25] There is no arguable case that the General Division based its decision on any factual errors. It accepted the income that the Claimant herself reported to the Commission.

[26] There is no arguable case that the General Division made an error of law. It correctly stated the law and the criteria for eligibility for the ERB. It did not make any errors when it applied the law to the Claimant's circumstances.

[27] I understand that the Claimant finds the two- and four-week periods outlined in the law confusing. The sections of the legislation are complex. The General Division's decision clearly explains the law despite this complexity.

[28] The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. The General Division properly cited and applied the law.

¹⁶ General Division decision at para 17.

¹⁷ General Division decision at para 20.

¹⁸ General Division decision at paras 19 and 21.

[29] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction.

[30] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[31] An extension of time is granted. Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division