



Citation: *FF v Canada Employment Insurance Commission*, 2023 SST 1333

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: F. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 5, 2023
(GE-23-2251)

Tribunal member: Solange Losier

Decision date: November 15, 2023

File number: AD-23-967

Decision

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

Overview

[2] F. F. is the Claimant in this case. When she stopped working in 2020 she applied for Employment Insurance (EI) benefits.

[3] The Canada Employment Insurance Commission (Commission) decided to change her weekly benefit rate from \$573.00 to \$508.00 based on additional information they got from her employer.¹ Because of that, the Claimant ended up with an overpayment.²

[4] The Claimant asked the Commission to reconsider its decision, but it refused because more than 30 days had passed from the date the decision was communicated to her.³ The Commission decided that the reasons she provided did not justify the delay or meet the requirements of *Reconsideration Request Regulations* in order to grant an extension of time.

[5] The General Division dismissed the Claimant's appeal. It found that the Claimant hadn't shown that the Commission didn't exercise its discretion judicially when it refused to give her an extension of time.⁴

[6] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.⁵ She needs permission for the appeal to move forward.

[7] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.⁶

¹ See initial decision at page GD3-27.

² See Notice of Debt at page GD3-28.

³ See reconsideration decision at page GD3-36.

⁴ See General Division decision at pages AD1A-1 to AD1A-7.

⁵ See application to the Appeal Division at pages AD1-1 to AD1-9 and AD1B-1.

⁶ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

Preliminary Matter

[8] The Claimant applied to the Appeal Division explaining why she disagreed with the General Division decision. She didn't identify a specific error (also known as "grounds of appeal") in her application.⁷

[9] So, the Tribunal sent her a letter asking for more information about her appeal.⁸ The letter asked the Claimant to identify the type of error made and to provide reasons based on what the Appeal Division could consider.

[10] The Claimant replied to the letter and restated the reasons why she disagreed with the General Division's decision.⁹

Issue

[11] Is there an arguable case that the General Division made a reviewable error?

Analysis

– The test for getting permission to appeal

[12] An appeal can proceed only if the Appeal Division gives permission to appeal.¹⁰

[13] I must be satisfied that the appeal has a reasonable chance of success.¹¹ This means that there must be some arguable ground upon which the appeal might succeed.¹²

[14] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors.¹³

⁷ See page AD1-5.

⁸ See Tribunal letter dated October 30, 2023.

⁹ See page AD1B-1.

¹⁰ See section 56(1) of the DESD Act.

¹¹ See section 58(2) of the DESD Act.

¹² See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹³ See section 58(1) of the DESD Act.

[15] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹⁴

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact

[16] For the appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.¹⁵

– I am not giving the Claimant permission to appeal

[17] The General Division dismissed the Claimant's appeal. It concluded that the Claimant hadn't shown that the Commission didn't use its discretion judicially when it didn't give her an extension of time to reconsider its initial decision.¹⁶

[18] A summary of the Claimant's arguments in this appeal are as follow:¹⁷

- She is honest and a senior
- She was laid off from her job when her employer closed due to Covid-19
- She was working full-time and paid EI premiums for almost ten years
- She started working light duty and less hours at work because of a car accident
- EI took her tax return money and she never agreed to this
- This is her labour rights, nobody helped her and this isn't fair

¹⁴ See section 58(1) of the DESD Act.

¹⁵ See section 58(2) of the DESD Act.

¹⁶ See paragraphs 2, 31 and 33 of the General Division decision.

¹⁷ See pages AD1-5 and AD1B-1.

[19] The Claimant did not identify the type of error that she thinks the General Division made. Even so, I have considered whether there were any reviewable errors based on the information that she provided and my review of the file.¹⁸

[20] The Tribunal has to follow the law, which includes the *Department of Employment and Social Development Act* (DESD Act). It provides rules for appeals to the Appeal Division.

[21] The Appeal Division is limited to determining whether the General Division made an error under the DESD Act.¹⁹

[22] The General Division's decision identifies the applicable legal test and relevant factors from the *Reconsideration Request Regulations*.²⁰ It stated that the Claimant had to show that the Commission didn't exercise its discretion judicially when it refused and referred to relevant case law to support its position.²¹

[23] The General Division's decision shows that it considered the Claimant's reasons, but ultimately decided that the Commission exercised its discretion in a judicial manner when it denied the extension of time.²²

[24] The General Division also explained why it rejected the Claimant's argument that the Commission overlooked a relevant factor.²³ She argued that her insurable earnings had decreased after she was placed on light duty at work and that this was a relevant factor overlooked by the Commission. However, the General Division decided it was not a relevant factor because the EI Act set out how a weekly benefit rate is calculated.²⁴

¹⁸ See section 58(1) of the DESD Act.

¹⁹ See *Marcia v Canada (Attorney General)*, 2016 FC 1367, at paragraph 34.

²⁰ See paragraphs 10-13 of the General Division decision and sections 1(1) and 1(2) of the *Reconsideration Request Regulations*.

²¹ See paragraphs 16-19 of the General Division decision.

²² See paragraphs 31 to 32 of the General Division decision.

²³ See paragraphs 31 to 32 of the General Division decision. Note: One of the paragraphs in the General Division decision appears to be incorrectly numbered.

²⁴ See sections 14 and 17 of the EI Act.

[25] Based on my review, the Claimant's arguments to the Appeal Division simply restate her position.²⁵ She is re-arguing her case. However, the Appeal Division does not provide an opportunity to conduct a rehearing of her case.²⁶

[26] The Claimant's arguments about the government taking her tax return without her consent is not something the General Division nor the Appeal Division has any authority to decide.

[27] I acknowledge that the Claimant may disagree with the General Division's decision, but that is not enough for me to intervene. I cannot reweigh the evidence to come to a conclusion more favourable for the Claimant.²⁷

[28] I am satisfied that the General Division did not misinterpret or fail to properly consider any relevant evidence.²⁸ There is no arguable case that the General Division made a reviewable error in this case. The Claimant's arguments have no reasonable chance of success.

Conclusion

[29] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

²⁵ See pages AD1-5 and AD1B-1.

²⁶ See *Parchment v Canada (Attorney General)*, 2017 FC 354 at paragraph 23.

²⁷ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

²⁸ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.