



[TRANSLATION]

Citation: *BM v Canada Employment Insurance Commission*, 2024 SST 134

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
November 23, 2023(GE-23-2846)

Tribunal member: Pierre Lafontaine

Decision date: February 14, 2024

File number: AD-24-8

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) regular benefits on June 23, 2020. On July 20, 2020, the Respondent (Commission) notified the Claimant that it could not establish a benefit period because he had 0 hours of insurable employment between June 16, 2019, and June 27, 2020.

[3] On September 28, 2022, the Claimant asked the Commission to reconsider after the 30-day time limit to make this request. He said that the insurable hours were calculated based on the last 12 months when, in his case, they should have been calculated focusing on the earnings he received in 2019. The Claimant says that he was eligible to receive the Canada Emergency Response Benefit (CERB).

[4] On February 3, 2023, the Commission notified the Claimant that it would not reconsider the July 20, 2020, decision. It found that the reasons the Claimant had given to justify the delay in filing his reconsideration request did not meet the requirements of the *Reconsideration Request Regulations*. The Claimant appealed the Commission's decision to the General Division.

[5] The General Division found that the Commission used its discretion judicially when it denied the Claimant more time to ask for a reconsideration.

[6] The Claimant is now asking the Appeal Division for permission to appeal the General Division decision. In support of his permission to appeal, he argues that the General Division made an error of jurisdiction. He argues that he did not apply for regular EI benefits but instead applied for the CERB.

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

[12] 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?

[13] The Claimant says that the General Division made an error of jurisdiction. He argues that he did not apply for regular EI benefits but instead applied for the CERB. He argues that the Commission made an error in reviewing his file from the start of his claim in 2020. He argues that its refusal was based on an error of judgment and understanding of his application.

[14] The evidence shows that the Claimant did not have any hours of insurable employment between June 16, 2019, and June 27, 2020. He was laid off by his employer in April 2019 and received EI benefits until June 2020.

[15] On June 23, 2020, the Claimant filed a claim for regular benefits.¹ Between March 15, 2020, and October 3, 2020, all claims for benefits were established as the Emergency Response Benefit (ERB).²

[16] On July 21, 2020, he received the Commission's initial decision denying him benefits because he did not have enough hours to qualify.³

[17] On September 26, 2022, the Claimant filed a request for reconsideration of the Commission's initial decision. He says his delay in filing his application was because he had just understood that he was eligible for the CERB, since he had earned a salary of more than \$5,000 in 2019.⁴

[18] In support of his appeal to the General Division, the Claimant argued that he was eligible for the CERB, and the Commission denied him that right. He says that he did not ask it to reconsider on time because he did not have new information that would help him support his request.⁵

¹ See GD3-3 to GD3-10.

² See sections 152.03 and 153.8(5) of the *Employment Insurance Act* (EI Act).

³ See GD3-11.

⁴ See GD3-13, GD3-14, and GD3-15.

⁵ See GD2-1.

[19] The Claimant argues that the Commission had the power to grant him the CERB when he applied. He had to ask for a reconsideration within 30 days of receiving the initial decision denying him benefits.

[20] The initial decision was communicated to the Claimant on July 20, 2020. He filed his reconsideration request on September 28, 2022. His request was more than 790 days late.

[21] The issue before the General Division was about the Claimant's failure to ask the Commission to reconsider its decision within the 30-day time limit.

[22] The General Division had to decide whether the Commission used its discretion judicially when it denied the request to extend the 30-day time limit to ask for a reconsideration of the initial decision.⁶ After reviewing the Claimant's evidence, the General Division found that the Commission had properly used its discretion.

[23] The General Division found that the Claimant had not given a reasonable explanation for the delay of more than 790 days in asking for a reconsideration. It found that the Claimant did not have a continuing intention to pursue his appeal because he did not take any action until after he learned he was eligible to receive the CERB. He even delayed until September 28, 2022, to apply after learning that he was eligible for the CERB.

[24] The General Division found that the Commission considered all the factors relevant to the Claimant's situation. Before making its decision, it considered that the Claimant was caring for his ill partner, and it also considered the Claimant's arguments about the CERB. The General Division found that the Commission used its discretion judicially when it refused to give more time to ask for a reconsideration of the initial decision.

[25] From reading the application for permission to appeal, I understand very well that the Claimant is criticizing the Commission for failing to inform him of his eligibility for the

⁶See section 112(1)(b) of the EI Act; and section 1 of the *Reconsideration Request Regulations*.

CERB as soon as his application was filed, and that this deprived him of the CERB. But the Tribunal does not have the jurisdiction to order compensation for damages suffered as a result of an alleged breach by the Commission. This is a debate for another forum.⁷

[26] In support of his application for permission to appeal, the Claimant has not identified any errors of jurisdiction or failure by the General Division to observe a principle of natural justice. He has not identified errors of law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

[27] For the above reasons, and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for permission to appeal, I must find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

⁷ See *T. T. v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; and *Attorney General of Canada v Tjong*, A-672-95.