



Citation: *IR v Canada Employment Insurance Commission*, 2024 SST 96

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: I. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 27, 2023
(GE-23-2420)

Tribunal member: Janet Lew

Decision date: January 31, 2024

File number: AD-24-4

Decision

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

Overview

[2] The Applicant, I. R. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant had not shown she was available for work from January 11, 2021, to September 11, 2021. As the Claimant was unavailable for work, she was not entitled to receive Employment Insurance benefits.

[3] The Claimant does not challenge any of the findings that the General Division made. Also, she does not say that the General Division made any legal, jurisdictional, or procedural errors.

[4] Instead, the Claimant asks the Appeal Division to consider her appeal on sympathetic and humanitarian grounds. Essentially, she is asking the Appeal Division to waive the overpayment of benefits that she owes because she is unable to repay it.

[5] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied “that the appeal has no reasonable chance of success.”

Issues

[7] The issues are as follows:

- (a) Is there an arguable case that the General Division made any legal, factual, jurisdictional, or procedural errors?
- (b) Does the Appeal Division have any power to waive or reduce the Claimant's overpayment?

I am not giving the Claimant permission to appeal

[8] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.³

[9] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.⁴

The Claimant does not have an arguable case that the General Division made any legal, factual, jurisdictional, or procedural errors

[10] The Claimant does not have an arguable case that the General Division made any legal, factual, jurisdictional, or procedural errors.

[11] The Claimant does not challenge the General Division's decision. Indeed, she says that she is not asking for a review or reconsideration.

[12] In my own review of the General Division decision, I do not see any instances where the General Division exceeded its authority, or where it might have failed to consider something that it should have considered. Similarly, I do not see any instances where the General Division might have made any legal errors. For instance, it did not

³ See section 58(1) of the DESD Act.

⁴ See section 58(1)(c) of the DESD Act.

apply the wrong test for determining whether the Claimant was available for work. The General Division identified the applicable test and then applied the law to the facts.

[13] Further, the General Division's findings were consistent with the evidence before it. The Claimant also received a fair hearing and had the chance to fully present her case.

[14] I am not satisfied that there is an arguable case that the General Division made any legal, factual, jurisdictional, or procedural errors.

The Appeal Division does not have any power to waive or reduce the Claimant's overpayment

[15] The Claimant asks the Appeal Division to consider her appeal on sympathetic and humanitarian grounds.

[16] Essentially, the Claimant is asking the Appeal Division to waive the overpayment of benefits that she owes. She says that she is unable to repay the debt. She receives less than \$400 in monthly Canada Pension Plan retirement benefits and Old Age Security benefits.

[17] As the General Division pointed out, the Social Security Tribunal (the General Division and the Appeal Division) does not have any power to reduce or cancel any overpayment that is owing to the Respondent, the Canada Employment Insurance Commission (Commission), whether on humanitarian and compassionate or other grounds. That power lies with the Commission.

[18] As the General Division also noted, the Claimant can ask the Commission for a write-off of the overpayment. The Claimant can look at the Notice of Debt for her options and any contact information. She can contact Canada Revenue Agency (CRA) to seek relief or ask about any repayment arrangements. CRA could assess her financial situation and make recommendations to the Commission about writing off or reducing the overpayment.

Conclusion

[19] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division