



Citation: *NN v Canada Employment Insurance Commission*, 2024 SST 223

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: N. N.
Representative: P. N.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 5, 2024
(GE-23-3205)

Tribunal member: Janet Lew
Decision date: March 6, 2024
File number: AD-24-112

Decision

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

Overview

[2] The Applicant, N. N. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that money that the Claimant received from her employer were earnings, for the purposes of the *Employment Insurance Act*. The General Division also found that those earnings had to be allocated (assigned) to certain weeks. Because of the allocation, this resulted in an overpayment of Employment Insurance benefits. The Claimant has already repaid the overpayment.

[3] The Claimant argues that the General Division acted unfairly. She says the General Division perpetuated systemic failures. She asks for a review of her claim, "with an emphasis on justice and equity, moving beyond the strict interpretation of laws to a more compassionate consideration of its impact on [her], as an individual."¹ The Claimant does not otherwise challenge the General Division's findings, nor does she say that the General Division made any legal errors. She asks the Respondent, the Canada Employment Insurance Commission (Commission), to return the repayment that she made.

[4] 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.² If the appeal does not have a reasonable chance of success, this ends the matter.³

¹ See Claimant's Application to the Appeal Division: Employment Insurance, at AD 1-5.

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ 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."

Issue

[5] Is there an arguable case that the General Division acted unfairly, without considering the impact that the allocation would have on the Claimant?

I am not giving the Claimant permission to appeal

[6] 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.⁴

[7] For these types of factual error, 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.⁵

The Claimant does not have an arguable case that the General Division acted unfairly

[8] The Claimant suggests that there were shortcomings in “the system.” When she was off work on sick leave, her employer “topped up” her Employment Insurance benefits. That way, she would get the equivalent of her salary. It was a well-meaning gesture but her employer was not registered to do this under an approved supplemental unemployment benefit plan.

[9] Because the Claimant’s employer had not been registered, the Commission had to allocate the top-up funds. These funds were considered earnings subject to allocation. This resulted in an overpayment of benefits that the Claimant has since repaid.

[10] The Claimant says the Commission should tell employers that they have to register before they “top up” any employees’ benefits.

⁴ See section 58(1) of the DESD Act.

⁵ See section 58(1)(c) of the DESD Act.

[11] The Claimant feels that she has been victimized by having to return the overpayment. She says the General Division should have considered the impact the allocation has had on her. She says the General Division acted unfairly.

[12] However, natural justice is about fairness in the process and procedural protections. Parties before the General Division enjoy rights to certain procedural protections such as the right to be heard, to know the case against them, to timely receipt of notice of hearings, and the right to an unbiased decision-maker. A procedural error involves the fairness of the process at the General Division. It is not concerned with whether a party feels that the decision is unjust.

[13] The Claimant may disagree and feel that the outcome is unfair, but this is not considered an error of natural justice.

[14] The Appeal Division's role in an application for leave to appeal is very limited. Unless there is an arguable case that the General Division made a type of error that I have described above, it cannot do anything more. The Appeal Division cannot change the rules or the law to address the impact the General Division's decision has on a claimant. The Appeal Division does not have the power under the *Department of Employment and Social Development Act* or the *Employment Insurance Act* to consider the impact allocation has on a claimant.

[15] As the Claimant's arguments do not address whether the process was fair, I am not satisfied that the appeal has a reasonable chance of success.

[16] The Claimant does not say the General Division committed any legal or factual errors. Indeed, I see that the General Division correctly re-stated and applied the law, and that its findings were consistent with the evidence before it.

[17] The General Division simply did not have any power to correct any errors that her employer made when it paid her without being registered. The General Division also did not have any power to address the impact on the Claimant, even if, as she says, the Commission could have done more to inform her employer about registering for an approved supplemental unemployment benefit plan.

[18] The General Division appropriately determined that the employer's payments to the Claimant constituted earnings for the purposes of the *Employment Insurance Act* and that these funds had to be allocated in the manner described by the General Division. The General Division's findings regarding the amounts involved and the dates of payment by the Claimant's employer reflected the evidence before it.⁶

Conclusion

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

Janet Lew
Member, Appeal Division

⁶ See, for instance, Record of Employment, at GD 3-12, and employer's payroll information, at GD 3-14. The Claimant disputes the dates and amounts but has not provided any records to support her claim that there were discrepancies (GD 3-20).