



[TRANSLATION]

Citation: *MT v Canada Employment Insurance Commission*, 2024 SST 385

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
January 31, 2024 (GE-23-3264)

Tribunal member: Pierre Lafontaine

Decision date: April 18, 2024

File number: AD-24-159

Decision

[1] Permission to appeal is not granted. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) was let go from his job at X on May 3, 2019. He applied for benefits on May 4, 2019.

[3] The Respondent (Commission) made a decision on October 24, 2023. It said that it had to allocate \$19,330.38 to the Claimant's benefit period starting on May 5, 2019. The Claimant challenged the Commission's decision, but the Commission upheld its decision on reconsideration. The Claimant appealed to the Tribunal's General Division.

[4] The General Division decided that the total amount of \$19,330.38 paid to the Claimant as vacation pay and severance pay was earnings to be allocated to his benefit period starting the week he was separated from his job, that is, the week of April 28, 2019.

[5] The Claimant wants to appeal the General Division decision to the Appeal Division.

Preliminary remarks

[6] I asked the Claimant to give me detailed reasons for his appeal. He did not reply to my request.

[7] In deciding this application for permission to appeal, I must consider only the evidence that was before the General Division. The Appeal Division's powers are limited.¹

¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

Issue

[8] The law 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 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.

[9] 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 at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case; he must instead establish that the 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.

[10] 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.

I am not giving the Claimant permission to appeal

[11] The Claimant argues that the General Division did not mention several facts in its analysis, such as the fact that he called the Commission to tell it that he had received an amount from his employer well after the date he was separated from his job. He says that no one at the Commission was able to answer him then. He argues that it was not until two years later that the Commission came back to him saying that he had not declared the amounts received. He says that he received \$57.48 from his employer, not \$91.58.

[12] The evidence before the General Division clearly shows that the amounts received were paid to the Claimant because of a layoff.

[13] The General Division accepted the amounts provided by the employer, namely \$91.58 (gross) received as vacation pay and \$19,238.80 paid as severance pay, which add up to \$19,330.38.

[14] To have 72 months to reconsider a claim, the Commission does not have to establish that the claimant did in fact make false or misleading statements. It just has to show that it could **reasonably find** that a false or misleading statement had been made in connection with the claim.²

[15] On July 19, 2019, the employer completed a form in response to a request from the Commission for payroll information. On the form, the employer indicated the amounts paid that were not declared by the Claimant following his layoff on May 3, 2019.³ The conversation with the Commission that he referred to in support of his application for permission to appeal did not happen until after the employer's form was submitted.⁴

[16] As a result, as the General Division noted, the Commission could reasonably find that the Claimant had made a false or misleading statement when it received the employer's form, which meant that it had 72 months to reconsider the claim.

[17] The Federal Court of Appeal has clearly established that money paid because of a separation from employment is earnings within the meaning of section 35 of the *Employment Insurance Regulations* (EI Regulations) and has to be allocated in accordance with section 36(9) of the EI Regulations.

² See section 52(5) of the *Employment Insurance Act*, *Langelier* (A-140-01), *Lemay* (A-172-01), and *Dussault* (A-646-02).

³ See GD3-21.

⁴ See GD6-6.

[18] The Federal Court of Appeal has also established that section 36(9) of the EI Regulations emphasizes the reason the employer paid the earnings **and not the timing of that payment**.⁵

[19] So, the General Division did not make an error when it found that the Claimant had received earnings and that those earnings had to be allocated under section 36(9) of the EI Regulations, since they were paid because of a separation from employment. As the General Division noted, the earnings have to be allocated from the week of the layoff and then weekly until there is nothing left over to allocate.

[20] Before the General Division, the Claimant argued that the amounts the employer had indicated were incorrect. However, he has not provided any evidence to the contrary to prove his position. To meet their burden of proof, it is not enough for a claimant to simply question the employer's information.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[22] Permission to appeal is not granted. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁵ See *Brulotte v Canada (Attorney General)*, 2009 FCA 149; *Canada (Attorney General) v Roch*, 2003 FCA 356; and *Canada (Attorney General) v King*, [1996] FCJ No 483.