



[TRANSLATION]

Citation: *AL v Canada Employment Insurance Commission*, 2024 SST 414

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
March 1, 2024 (GE-24-327)

Tribunal member: Pierre Lafontaine

Decision date: April 23, 2024

File number: AD-24-252

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on March 22, 2020. A benefit period for the Employment Insurance Emergency Response Benefit (EI ERB) was established. On April 6, 2020, the Respondent (Commission) gave the Claimant an advance payment of \$2,000.

[3] On November 13, 2021, the Commission asked the Claimant to pay back the \$2,000 advance payment. The Commission says that the Claimant was overpaid \$2,000 in EI ERB. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant filed his appeal late. It found that the Claimant had not given a reasonable explanation for why his appeal was late. Because of this, the General Division did not give the Claimant more time to appeal.

[5] The Claimant is asking the Appeal Division for permission to appeal the General Division decision. He argues that his workload for the period from September to December is particularly difficult. He explains in detail the events that led to his late appeal to the General Division.¹

[6] I have to 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.

[7] 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.

¹ See AD1-2.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[9] The law specifies the only grounds of appeal of a General Division decision.² 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.

[10] 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; he must instead 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.

[11] 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.

² See section 58(1) of the *Department of Employment and Social Development Act*.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[12] The Claimant argues that his workload for the period from September to December is particularly difficult. He explains in detail the events that led to his late appeal to the General Division.³

[13] In support of his reconsideration request, and his appeal to the General Division, the Claimant argues that he needed the \$2,000 advance payment to make up for the loss of two other incomes.

[14] The General Division found that neither the Claimant's busy work schedule nor the apparent complexity of his file could be considered a reasonable explanation for not filing his appeal within the 30-day deadline set out in the law.

[15] For an appeal to succeed at the Appeal Division, the Claimant has to show that the General Division improperly used its discretion by refusing to give more time to appeal.

[16] I note that the Claimant appealed the Commission's reconsideration decision, concerning the \$2,000 EI ERB advance payment, to the General Division on October 16, 2023.

[17] It is not disputed that the Claimant made an initial claim for benefits on March 22, 2020, and received the EI ERB from March 15 to April 18, 2020.

[18] The Claimant reported a full-time return to work on April 20, 2020, and he did not have any other periods of unemployment after that.⁴ This meant that he was no longer eligible for the EI ERB from the time he returned to work full-time.

[19] So, the Claimant was eligible for five weeks of the EI ERB for a total of \$2,500 (five weeks at \$500 = \$2,500). But he received \$4,500, which is the equivalent of nine

³ See AD1-2.

⁴ See GD3-43.

weeks of EI ERB (five weeks + the equivalent of four weeks of advance payments = nine weeks). This means that the Claimant was overpaid \$2,000 (\$4,500 - \$2,500 = \$2,000).

[20] I note that the legislation in force during the pandemic allows the Commission to reconsider whether a person received an EI ERB amount that they were not eligible for. The law is clear that the Claimant has to pay back the overpayment.⁵

[21] Unfortunately, the law does not allow **any discrepancies** and gives the Tribunal **no discretion** to write off the overpayment, **even for compassionate reasons**.

[22] In my view, the Claimant's appeal has no reasonable chance of success. I see no reviewable error made by the General Division in using its discretion. The file, which is not really complex, and the Claimant's busy work schedule do not amount to a reasonable explanation for not filing an appeal with the General Division within the 30-day deadline set out in the law.

[23] For the reasons above, 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 find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

[24] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁵ See sections 44, 52 and 153.6(1)(a) of the *Employment Insurance Act*.