



Citation: *EC v Canada Employment Insurance Commission*, 2024 SST 412

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 19, 2024
(GE-24-602)

Tribunal member: Pierre Lafontaine

Decision date: April 23, 2024

File number: AD-24-275

Decision

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

Overview

[2] The Respondent (Commission) became aware that the Applicant (Claimant) was working during a period he was getting EI benefits and had not reported his work or earnings to them.

[3] After an investigation, the Commission determined the Claimant had been working from February to September 2019, had earnings from this work, and had not reported it to them. The Commission allocated the Claimant's earnings to the weeks he did the work he was paid for. This allocation resulted in an overpayment for the Claimant. The Commission says he must now pay back benefits he received during the weeks he was working. The Claimant disagreed and appealed to the General Division.

[4] The General Division found that the amounts the Claimant received from his employer were earnings, because they were paid to compensate for hours worked. The General Division found that the Commission correctly allocated the Claimant's earnings to the weeks in which the services were performed. It dismissed the Claimant's appeal.

[5] The Claimant is asking leave to appeal of the General Division decision to the Appeal Division. In support of his application, the Claimant reiterates that he needs help because he cannot afford to pay back the overpayment. He puts forwards that he received no response from the EI department.

Issue

[6] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[7] The law specifies the only grounds of appeal of a General Division decision.¹
These reviewable errors are that:

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.

[8] An application for leave 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 leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[9] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

I am not giving the Claimant permission to appeal

[10] The Claimant reiterates that he needs help because he cannot afford to pay back the overpayment. He puts forwards that he received no response from the EI department to settle this issue.

[11] The General Division found that the amounts the Claimant received from his employer were earnings, because they were paid to compensate for hours worked.

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

[12] The General Division found that the Commission correctly allocated the Claimant's earnings to the weeks in which the services were performed.

[13] I see no reviewable error made by the General Division. The burden of proof for disputing the employer's pay information rests with the claimant, and mere allegations intended to show doubt are insufficient.² Based on the evidence before it, the General Division could not draw a conclusion different from that at which it arrived.

[14] This Tribunal does not have the authority to reduce or annul an EI debt. As stated by the General Division, in the case of financial hardship, the *Canada Revenue Agency* makes available online a form to complete and send accompanied with all the necessary information that they need to see, such as bills, mortgage payments, any loans, bank, and credit card information, and of course income statements, showing how much money is being made. The Claimant can also discuss with the collection agent to establish affordable monthly payments.

[15] I must mention that while it was commendable for the General Division member to explain possible options to the Claimant, its duty did not extend so far as to provide him with legal advice.

[16] After reviewing the appeal file, the General Division's decision, and the arguments in support of the Claimant's application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could lead to the setting aside of the decision under review.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

² *Dery v Canada (Attorney General)*, 2008 FCA 291.