



Citation: *RA v Canada Employment Insurance Commission*, 2024 SST 174

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: R. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 11, 2024
(GE-23-2946)

Tribunal member: Pierre Lafontaine

Decision date: February 23, 2024

File number: AD-24-54

Decision

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

Overview

[2] The Applicant (Claimant) applied for regular Employment Insurance (EI) benefits on December 29, 2020, and established a claim on December 27, 2020.

[3] The Claimant's former employer (X) issued a *Record of Employment* (ROE) that showed the Claimant's first day worked was August 3, 2021, and her last day paid was January 17, 2022.

[4] The employer reported the Claimant earned \$1,020.00 for the week commencing August 1, 2021, and \$1,275.00 for the week commencing August 8, 2021. The Claimant declared \$0 earnings for both weeks on her claimant report.

[5] The Respondent (Commission) decided that the money paid to the Claimant by the employer was "earnings" under the law, because the payment was made to compensate the Claimant for hours worked for the employer. It allocated the earnings of \$1,020.00 to the week of August 1, 2021, and \$1,275.00 to the week of August 8, 2021. The Commission allocated these earnings to those weeks because this was the period in which the services were performed. The Claimant disagreed and appealed to the General Division.

[6] The General Division found that the Claimant received from her former employer were earnings, because they were paid to compensate her for hours worked. It found the Claimant attended seminars and meetings. The General Division found that the Commission correctly allocated the Claimant's earnings to the weeks in which the services were performed. Specifically, the Commission correctly allocated the earnings of \$1,020.00 to the week of August 1, 2021, and \$1,275.00 to the week of August 8, 2021. It dismissed the Claimant's appeal.

[7] The Claimant is asking leave to appeal of the General Division decision to the Appeal Division. In support of her application, the Claimant reiterates that she was not allowed to start the job description work responsibilities that she was hired for until she provided medical proof of chest X-ray tuberculosis and Covid-19 second dose completion.

Issue

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

Analysis

[9] 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.

[10] 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 her 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.

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

[11] 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

[12] The Claimant reiterates that she was not allowed to start her job description work responsibilities that she was hired for until she provided medical proof of chest X-ray tuberculosis and Covid-19 second dose completion.

[13] The Claimant's former employer issued a ROE that shows the Claimant's first day worked was August 3, 2021, and her last day paid was January 17, 2022.²

[14] The evidence shows that the Claimant's former employer indicated that the Claimant worked and/or had earnings during the weeks of August 1 and August 8, 2021. She was paid \$1,020.00 for the week of August 1, 2021, and \$1,275.00 for the week of August 8, 2021.³

[15] Before the General Division, the Claimant did not dispute that she had received the money from her employer on August 26, 2021.⁴

[16] Even though the Claimant maintains that she was not authorized to start the job for which she was hired before updating her medical condition, the evidence shows that **she was paid** by her former employer **for the two weeks** in question. In these circumstances, the earnings were clearly "paid" to her within the meaning of section 36(4) of the *Employment Insurance Regulations*.

[17] It is also well established that earnings are allocated based on when they were earned and not when they are paid by the employer.⁵

² See GD3-15.

³ See GD3-19.

⁴ See GD3-31.

⁵ See *Canada (Attorney General) v Roch*, 2003 FCA 356.

[18] The burden of proof for disputing the employer's pay information rests with the claimant, and mere allegations intended to show doubt are insufficient.⁶ Based on the evidence before it, the General Division could not draw a conclusion different from that at which it arrived.

[19] 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

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

Pierre Lafontaine
Member, Appeal Division

⁶ *Dery v Canada (Attorney General)*, 2008 FCA 291.