



Citation: *MK v Canada Employment Insurance Commission*, 2024 SST 482

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 26, 2024
(GE-23-3024)

Tribunal member: Solange Losier

Decision date: May 6, 2024

File number: AD-24-315

Decision

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

Overview

[2] M. K. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits on February 3, 2022.

[3] The Canada Employment Insurance Commission (Commission) found that the Claimant had received wages from his employer totalling \$1,456.00 for the week starting on June 12, 2022. It decided that the earnings had to be allocated to his EI claim.¹ This resulted in an overpayment of EI benefits.

[4] The General Division concluded the same.² It said that the Claimant had received earnings (i.e., wages) and allocated them to his EI claim. So, the overpayment remained.

[5] The Claimant is now asking for permission to appeal to the Appeal Division.³ He says that the General Division made an error of law, error of jurisdiction and didn't follow a fair process.

[6] There is no arguable case that the General Division made any of the above errors, so permission to appeal is refused.

Issue

[7] Is there an arguable case that the General Division made an error of law, an error of jurisdiction, or didn't follow a fair process?

¹ See Commission's reconsideration decision at pages GD3-45 to GD3-46.

² See General Division decision at pages AD1A-1 to AD1A-9.

³ See Application to the Appeal Division at pages AD1-1 to AD1-9.

Analysis

– The test for getting permission to appeal

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁴

[9] I must be satisfied that the appeal has a reasonable chance of success.⁵ This means that there must be some arguable ground that the appeal might succeed.⁶

[10] The possible grounds of appeal to the Appeal Division are that the General Division:⁷

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[11] For the Claimant's appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.⁸

[12] In this case, the Claimant argues that the General Division made an error of law, an error of jurisdiction and didn't follow a fair process.⁹ This decision will focus on whether the General Division made any of those errors.

I am not giving the Claimant permission to appeal

[13] In his application to the Appeal Division, the Claimant wrote that he has a learning disability which makes it difficult to understand things.¹⁰ He explained that he has been made to feel like a criminal and has difficulties in his life, such as mental

⁴ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ See section 58(2) of the DESD Act.

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁷ The relevant errors are formally known as "grounds of appeal." They are listed under section 58(1) of the DESD Act. These errors are also explained on the Application to the Appeal Division.

⁸ See section 58(2) of the DESD Act.

⁹ See page AD1B-4.

¹⁰ See pages AD1-5 and AD1B-4.

health and addictions issues. He says that his learning disability has never been addressed by anyone. He has asked for help and nobody has helped him.

[14] The Claimant also wrote that he has wasted hundreds of hours calling and going to places. He does not trust Service Canada or his employer and he wants bank records. He switched banks and he didn't get any payments made at the beginning of the claim.¹¹ He went to the bank to recover them but Service Canada took too long to process them. He can't rely on EI and his workplace since he has dealt with so many lies and misjudgments.

– **There is no arguable case that the General Division made an error of law**

[15] An error of law can happen when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.¹²

[16] The law says that earnings are the entire income that you get from any employment.¹³

[17] The law also says that all earnings have to be allocated to certain weeks.¹⁴ What weeks the earnings are allocated to depends on why you received the earnings. For example, earnings that are paid or payable to a claimant for the performance of services must be allocated to the period in which the services were performed.¹⁵

[18] The General Division found that the Claimant received earnings totalling \$1,456.00 for the week of June 12, 2022.¹⁶ It decided that the earnings he received were wages because his employer paid him for work he did.¹⁷

¹¹ See page AD1B-4.

¹² See section 58(1)(b) of the DESD Act.

¹³ See section 35(2) of the *Employment Insurance Regulations* (EI Regulations).

¹⁴ See section 36 of the EI Regulations.

¹⁵ See section 36(4) of the EI Regulations.

¹⁶ See paragraphs 43-46 of the General Division decision.

¹⁷ See paragraph 53 of the General Division decision.

[19] The General Division relied on the Record of Employment (ROE) and the Commission's notes from a discussion they had with his employer when it decided that he received wages for work performed.¹⁸

[20] The General Division rejected the Claimant's argument that the money he got was from a retroactive Canada Emergency Wage Subsidy (CEWS) payment from the employer.¹⁹

[21] The General Division stated and applied the above law correctly in its decision.²⁰ It set out the legal test and applied it based on the facts before it.

[22] So, there is no arguable case that the General Division made an error of law.²¹

– **There is no arguable case that the General Division made an error of jurisdiction**

[23] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.²²

[24] The General Division had to decide whether the Claimant had earnings and if so, whether they should be allocated to his EI claim.²³

[25] As noted above, the General Division decided that the Claimant had received wages from his employer, totalling \$1,456.00 for the week of June 12, 2022. It found that the wages had to be allocated to his EI claim.

[26] The allocation of the earnings resulted in an overpayment of EI benefits and a notice of debt was issued to the Claimant for \$638.00.²⁴

[27] The General Division found that it did not have the jurisdiction to address another "bigger" overpayment that the Claimant already had. In its decision, it explained that it

¹⁸ See paragraphs 47-50 and 55-56 of the General Division decision and page GD3-43.

¹⁹ See paragraph 49 of the General Division decision.

²⁰ See paragraphs 43-46, 52 and 54 of the General Division decision.

²¹ See section 58(1)(b) of the DESD Act.

²² See section 58(1)(a) of the DESD Act.

²³ See sections 35 and 36 of the EI Regulations.

²⁴ See notice of debt at page GD3-35 to GD3-37.

was limited to the Commission's reconsideration decision.²⁵ It also explained this in a letter to him.²⁶

[28] I reviewed the General Division file. The file shows that the Commission made an initial decision and the Claimant asked them to reconsider that decision.²⁷ On reconsideration, the Commission maintained that the Claimant had received earnings that needed to be allocated, but they reversed their decision on the penalty.²⁸

[29] In this case, the only issue before the General Division was the earnings and allocation of wages for the week of June 12, 2022. This is what led to his overpayment for \$638.00.

[30] This means that the General Division's jurisdiction was limited to the issue/s identified on the Commission's reconsideration decision (dated September 28, 2023). This is what the Claimant appealed to the Tribunal.²⁹

[31] The General Division had no authority to investigate or consider other existing overpayments. If the Claimant has concerns about other existing overpayments on his account, then he needs to ask Service Canada for a "Request for Reconsideration."

[32] The Claimant is liable to repay the overpayment in this case.³⁰ I want to also add that the General Division cannot write off the overpayment because only the Commission can do that.³¹

[33] However, the Claimant can still ask the Commission for a write off of the overpayment if he has financial hardship, or he can talk to Canada Revenue Agency to discuss a payment plan.

²⁵ See paragraphs 36-40 of the General Division decision.

²⁶ See letter at page GD10-1 to GD10-4.

²⁷ See initial decision at pages GD3-33 to GD3-34 and reconsideration request at pages GD3-28 to GD3-32.

²⁸ See reconsideration decision at pages GD3-45 to GD3-46. The Commission had initially imposed a penalty of \$319.00 for 1 false representation, but they reversed their decision on the penalty.

²⁹ See sections 112 and 113 of the *Employment Insurance Act* (EI Act).

³⁰ See section 44 of the EI Act.

³¹ See section 112.1 of the EI Act and *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at paragraph 16.

[34] So, there is no arguable case that the General Division made an error of jurisdiction because it only decided the issues it had to decide. It did not decide any issues that it had no authority to decide.³²

– **There is no arguable case that the General Division didn't follow a fair process**

[35] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against him and to be given an opportunity to respond to it.

[36] If the General Division doesn't follow a fair process, then I can intervene.³³

[37] The General Division identified that the Claimant didn't attend the teleconference hearing held on March 22, 2024.³⁴ I note that the Commission did not attend the teleconference either.

[38] The *Social Security Tribunal Rules of Procedure* allow the General Division to proceed with an oral hearing in the absence of a party or parties if it is satisfied that the parties got the notice of the hearing.³⁵ The General Division made a minor error when it quoted the section that gives its authority to do this.³⁶

[39] In this case, the General Division was satisfied the Claimant got notice of the hearing.³⁷ The file shows that the Claimant and Commission were emailed the notice of hearing on February 6, 2024.³⁸

³² See section 58(1)(a) of the DESD Act.

³³ See section 58(1)(a) of the DESD Act.

³⁴ See paragraph 11 of the General Division decision.

³⁵ This is set out in section 58 of the *Social Security Tribunal Rules of Procedure*, which came into effect in December 2022.

³⁶ The General Division incorrectly referred to section 12 of the *Social Security Tribunal Regulations*.

³⁷ See paragraphs 12 and 32 of the General Division decision.

³⁸ See pages GD12-1 to GD12-4. This is the notice of hearing for the teleconference hearing scheduled on March 22, 2024.

[40] On the scheduled hearing date, March 22, 2024, the General Division waited on the telephone line for the Claimant to join. It waited approximately 22 minutes after the scheduled hearing time.

[41] The General Division asked Tribunal staff to call the Claimant at the start of the hearing. He answered but there was background noise so they could not speak. Tribunal staff tried calling him back, but he didn't answer and they were not able to leave him a message.³⁹

[42] The General Division issued its decision a few days after the hearing and explained that there was a long history with this file.⁴⁰ It outlined in detail the number of times this case has been rescheduled at the Claimant's request (a total of 6 times).⁴¹

[43] There is no indication that the General Division didn't follow a fair process. The file shows that the General Division rescheduled the hearing date on several occasions to accommodate the Claimant and to give him more time to prepare. It only proceeded with the hearing after it was satisfied that the Claimant got the notice of hearing. So, the General Division was free to proceed with the hearing and render the decision it did.

[44] There is no arguable case that the General Division didn't follow a fair process.⁴²

– **There are no other reasons for giving the Claimant permission to appeal**

[45] I reviewed the file, listened to the audio recording and examined the General Division decision.⁴³

[46] Based on my review, the General Division identified and applied the correct law. Its key findings are consistent with the evidence in the file. It explained with reasons why it made the decision it did and it followed a fair process. I did not find any relevant evidence that the General Division might have ignored or misinterpreted.

³⁹ See paragraph 35 of the General Division decision.

⁴⁰ See paragraph 12 of the General Division decision.

⁴¹ See paragraphs 14-35 of the General Division decision.

⁴² See section 58(1)(a) of the DESD Act.

⁴³ The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

[47] The Claimant might disagree with the General Division decision, but that isn't enough for me to intervene. An appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence in order to come to a different conclusion that is more favourable for the Claimant.⁴⁴

[48] Accordingly, there is no arguable case that the General Division made a reviewable error. This means that this appeal has no reasonable chance of success.

Conclusion

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

Solange Losier
Member, Appeal Division

⁴⁴ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.