Citation: *AB v Canada Employment Insurance Commission*, 2024 SST 947

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated July 16, 2024 (GE-24-2306)

Tribunal member:	Janet Lew
Decision date:	August 8, 2024
File number:	AD-24-505

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, A. B. (Claimant), is seeking leave to appeal the General Division decision.

[3] The General Division found that the Claimant was outside Canada from November 24, 2020, to December 19, 2020. The General Division also found that the Claimant left the country to attend a family member's funeral. It determined that she was entitled to seven days of Employment Insurance benefits from November 25, 2020, to December 1, 2020. However, it found that she remained disentitled from receiving benefits from December 2, 2020, to December 19, 2020.

[4] The Claimant argues that that she should also get Employment Insurance benefits for the period from December 2, 2020, to December 19, 2020. She says that, despite being out of the country, she was ready, willing and capable of working each day. She also notes that she contributed to the Employment Insurance program for over 30 years and that this was the first time that she had applied for benefits.

[5] The Claimant argues that the General Division failed to follow procedural fairness and also made legal and factual errors. In particular, she argues that the Respondent, the Canada Employment and Insurance Commission (Commission), should not be allowed to ask her for repayment of benefits close to three years after it initially paid her. She claims that the Commission was tardy, sloppy, and inefficient. She also argues that the General Division also made errors in how it referred to her in its decision.

[6] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an

arguable case.[1] If the appeal does not have a reasonable chance of success, this ends the matter.[2]

[7] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to be Claimant to move ahead with this appeal.

Issues

[8] The issues are as follows:

a) Is there an arguable case that the General Division failed to follow procedural fairness?

b) Is there an arguable case that the General Division made a legal error about the Commission's ability to ask for repayment of benefits?

c) Is there an arguable case that the General Division made a legal error about the Claimant's entitlement to benefits?

d) Is there an arguable case that the General Division overlooked some of the evidence?

e) Is there an arguable case that the General Division based its decision on a factual error that it made in a perverse or capricious manner or without regard for the material before it?

I am not giving the Claimant permission to appeal

[9] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.[3]

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[1] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[2] See section 58(2) of the *Department of Employment and Social Development* (DESD) *Act*, I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."
[3] See section 58(1) of the DESD Act.

[10] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.[4]

The Claimant does not have an arguable case that the General Division failed to follow procedural fairness

[11] The Claimant does not have an arguable case that the General Division failed to follow procedural fairness.

[12] Natural justice is about fairness in the process. Parties before the General Division enjoy certain procedural protections such as the right to know the case against them, the right to answer that case, and the right to an unbiased and impartial decision-maker.[5] A procedural error involves the fairness of the process at the General Division. It is not concerned with whether a party feels that the decision is unjust.

[13] Here, there is nothing to suggest that the Claimant did not receive a fair hearing or the chance to fully present her case at the General Division. There is nothing to suggest either that the General Division member was biased or that there was a reasonable apprehension of bias.

[14] The Claimant's arguments are not directed at the General Division member. Instead, she argues that the Social Security Tribunal (Tribunal) gave her inaccurate information and misdirected her. She says that it gave her the wrong link for her to pursue an appeal of the General Division decision to the Appeal Division.

[15] In a letter dated July 17, 2024, the Tribunal told the Claimant that, if she disagreed with the General Division decision, she could seek leave (permission) to appeal. The Tribunal also told her that to start this process, she would have to complete an Application to the Appeal Division form. The Tribunal provided a web link where it said she could find the application form.

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[4] See section 58(1)(c) of the DESD Act.
[5] See *Palozzi v Canada (Attorney General)*, 2024, FCA at para 9, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] F.C.R. 121 at para 41.

[16] In fact, the link did not lead the Claimant to any application forms. Instead, it led her to an “error page.” The Tribunal’s web link did not lead the Claimant to the application form as it said it would.

[17] The “error page” provided two links: one to the home page (for the Department of Employment and Social Development), and the other to a “contact us and we’ll help you out” page.

[18] If the Claimant had clicked on the second link, she would have been directed to another page. This other page contained another link where she could have asked for help, by either telephone or email. This page also had a link to contacts to departments or programs. So, the Claimant could have located contact information for the Tribunal. She could have called or written to the Tribunal for further assistance, even if this meant asking it to mail her a blank application form.

[19] As it is, the Tribunal’s letter of July 17, 2024, correctly identified the next steps for the Claimant. It also gave her the name of the form that she had to complete to appeal the General Division’s decision to the next level. It also told her that she had 30 days from the day that she received the letter to submit an application form.

[20] There was nothing inherently unfair about the process at the General Division. The Tribunal made an error in giving outdated information to the Claimant, but any potential harm from the error would have affected the Claimant at the Appeal Division. The wrong information could have affected the Claimant from being able to file an application to the Appeal Division on time, or at all.

[21] As it is, although the Tribunal gave the Claimant an outdated link, that did not prevent her from being able to find and then bring an application to the Appeal Division.

[22] The Claimant filed an application with the Appeal Division on August 1, 2024—well within the 30-day limit for filing. The outdated link clearly did not prejudice the Claimant from being able to bring an appeal.

[23] I am not satisfied that there is an arguable case that the General Division failed to follow procedural fairness.

The Claimant does not have an arguable case that the General Division made a legal error about the Commission's ability to ask for repayment of benefits

[24] The Claimant does not have an arguable case that the General Division made a legal error about the Commission's ability to ask for repayment of benefits. The General Division member examined this issue and appropriately determined that the *Employment Insurance Act* allows the Commission to revisit its decisions within certain timeframes.

[25] The Claimant argues that the Commission was tardy, sloppy, and inefficient. She says that the Commission took about three years to review her claim and seek repayment of benefits. She suggests that this was too long for it to be able to review her claim.

[26] The General Division found that, under section 52 of the *Employment Insurance Act*, the Commission usually has three years to review its decisions. The General Division also noted that sometimes, the Commission may have more than three years to review its decisions.[6]

[27] Section 52 of the *Employment Insurance Act* provides as follows:

> **Reconsideration of claim**
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> **52(1)** Despite section 111, but subject to subsection (5), the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.
>
> **…**

[6] See General Division decision, at paras 13 to 16.

Extended time to reconsider claim

(5) If, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with the claim, the Commission has 72 months within which to reconsider the claim.

[28] In June 2022, the Commission informed the Claimant that it had received information from Canada Border Services Agency that indicated that she had travelled outside Canada between November 24, 2020, and December 19, 2020. This triggered a review by the Commission. After all, the Claimant had completed biweekly reports in which she had declared that she was in Canada between Monday and Friday throughout this timeframe.[7] The Claimant did not dispute that she was outside Canada throughout this time.

[29] As the Commission was of the opinion that the Claimant had knowingly made a false representation about whether she was outside Canada, the Commission had 72 months within which to reconsider the claim. So, although the Claimant argues that three years was too long for the Commission to reconsider its decision, the *Employment Insurance A*ct actually gave the Commission 72 months to reconsider, given the circumstances.

[30] I am not satisfied that there is an arguable case that the General Division made a legal error about whether the Commission had the ability to reconsider its decision after almost three years. The General Division identified the applicable law, and then properly applied the law to the facts and determined that the Commission reconsidered its decision within the timeframe under the *Employment Insurance Act*.

The Claimant does not have an arguable case that the General Division made a legal error about her entitlement to benefits

[31] The Claimant does not have an arguable case that the General Division made a legal error about her entitlement to benefits.

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[7] See GD 3–18 (timeframe November 15, 2020, to November 28, 2020), GD 3–23 (timeframe November 29, 2020, to December 12, 2020), and GD 3–28 (December 13, 2020, to December 26, 2020).

[32] The Claimant was outside of Canada, but she states that she was always ready, willing, and able to work each day. Essentially, she is arguing that she was available for work remotely, even outside the country. However, as the General Division noted, generally, a claimant is not entitled to receive benefits while outside of Canada unless they fall into any of the exceptions to the general rule.

[33] While it may be that the Claimant was able to look for work and could have worked remotely from overseas, the requirements under the *Employment Insurance Act* regarding availability and being outside of Canada have not changed to provide for benefits while looking for and working remotely while outside Canada.

[34] The General Division identified the applicable law and applied it to the facts, and determined that, as the Claimant was out of the country to attend the funeral, she was entitled to benefits for only seven days, under section 55 of the *Employment Insurance Regulations*.

[35] I am not satisfied that there is an arguable case that the General Division made a legal error about the Claimant's entitlement to benefits while outside Canada.

The Claimant does not have an arguable case that the General Division overlooked some of the evidence

[36] The Claimant does not have an arguable case that the General Division overlooked the fact that she contributed to the Employment Insurance program for over 30 years and had never made a claim before. These considerations simply were not relevant to the Claimant's entitlement to benefits.

[37] The Claimant argues that because she contributed to the Employment Insurance program for over 30 years and had never made a claim before, she should be able to rely on the program and get benefits.

[38] However, the Employment Insurance program operates like an insurance scheme. A contributor has to meet certain qualifying conditions to be eligible to receive benefits, and they cannot have done or failed to do anything to be disentitled or disqualified from receiving benefits.

[39] As the General Division noted, a claimant generally is not entitled to receive benefits while they are outside of Canada,[8] although there are exceptions.[9] One of the exceptions applied to the Claimant. Otherwise, the general rule applied.

[40] It was irrelevant that the Claimant contributed to the Employment Insurance program for over 30 years, or that she had not made a claim before. So, the General Division did not have to consider this evidence when it decided whether the Claimant was entitled to any Employment Insurance benefits.

[41] I am not satisfied that there is an arguable case that the General Division overlooked some of the evidence.

The Claimant does not have an arguable case that the General Division based its decision on any factual errors

[42] The Claimant does not have an arguable case that the General Division based its decision on a factual error that it made in a perverse or capricious manner or without regard for the material before it. The General Division clearly made errors about the Claimant's gender. However, the General Division did not base its decision on these errors.

[43] As the Claimant notes, the General Division referred to her as both a male and female in its decision. For instance, at paragraph 7 of its decision, the General Division wrote, "I asked her if he wanted to submit anything else. If she wanted to send anything further, I asked him to do so by July 15, 2024."

[44] Clearly, the General Division made errors in referring to the Claimant as a male. However, these errors do not raise an arguable case because the General Division did not decide the Claimant's entitlement to benefits based on the Claimant's gender. The error has to have a bearing on the outcome of the case.

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[8] See General Division decision, at para 17, citing section 37(b) of the *Employment Insurance Act*.
[9] See General Division decision, at para 17, citing section 55 of the *Employment Insurance Regulations*.

[45] I am not satisfied that there is an arguable case that the General Division based its decision on factual errors. In order to establish an arguable case, there has to be a specific type of error, which was not borne out. The types of factual errors do not rise to the level that invite intervention by the Appeal Division.

The Overpayment

[46] The Claimant received Notices of Debt.[10] The Commission is asking for repayment of benefits. The Claimant asked the General Division to waive or reduce the amount of the overpayment. However, the General Division and, for that matter, the Appeal Division, do not have any authority to waive or reduce any of the overpayment.

[47] If the Claimant refers to the Notice of Debt, she will see that it outlines her options. She will also see that there is contact information for help. The General Division also referred to these options.

[48] If the Claimant has not already done so, she can contact the Debt Management Call Centre at Canada Revenue Agency (CRA) to seek relief or ask about any repayment arrangements.

Conclusion

[49] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

[10] The Claimant received a Notice of Debt dated October 28, 2023, with a balance of $1,886.00 (see GD 3–45) and a second Notice of Debt, this one dated June 22, 2024, with a balance of $1,282.00 (See GD 3–62).