



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. J. v Canada Employment Insurance Commission*, 2020 SST 720

Tribunal File Number: AD-20-123

BETWEEN:

**L. J.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: August 21, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] The Appellant, L. J. (Claimant), is appealing the General Division's decision.

[3] Although the General Division allowed the Claimant's claim, in part, the decision had an unintended consequence. Overall, the decision left the Claimant with a larger overpayment of Employment Insurance benefits than she had before she brought an appeal to the General Division. The Claimant did not see this coming. Indeed, she thought her appeal to the General Division would reduce her overpayment.

[4] The Claimant argues that the General Division should have ended the appeal without making a decision. Or, she says that the General Division should have told her in advance that she risked getting an unfavourable outcome. That way, she might have withdrawn her appeal. She says the General Division's failure to inform her represents a breach of natural justice. The Claimant also argues that the General Division should have written off the overpayment because of her circumstances. She also questions the amount of the overpayment.

[5] The appeal is dismissed because the General Division did not commit any errors. However, the Claimant still has the option of seeking a write-off of the overpayment, but she has to follow certain steps to request one.

### **ISSUES**

[6] The issues are:

- Was the General Division under a duty to inform the Claimant of the potential consequences its decision could have on her? If so, did the General Division fail its duty?

- Did the General Division have the authority to write off the overpayment?

## **ANALYSIS**

[7] Under section 58(1) of the *Department of Employment and Social Development Act* (DESDA), the Appeal Division can intervene in the General Division's decision in very limited circumstances. The section does not give the Appeal Division any jurisdiction to conduct any reassessments.<sup>1</sup> The Appeal Division can intervene only if there has been a breach of natural justice, an error of law or if it based its decision on an error of fact.

[8] The Claimant argues that the General Division made mistakes under section 58(1) of the DESDA.

### **Was the General Division under a duty to inform the Claimant of the potential consequences its decision could have on her? If so, did the General Division fail in its duty?**

[9] The Claimant argues that the General Division should have at least warned her that its decision could lead to a larger overpayment for her. That way, she could have withdrawn her appeal. Alternatively, she argues that the General Division could have ended the appeal without rendering a decision.

[10] I invited the Claimant to provide any supporting authorities to support these arguments. None was forthcoming.

[11] While the parties might welcome a "heads up" from the General Division, I am unaware of any authorities or any duty that the General Division has to inform parties of any potential consequences its decision could have. So, the General Division did not err by going ahead and making a decision as it was required to do.<sup>2</sup>

### **Did the General Division have the authority to write off the overpayment?**

[12] The Claimant argues that the General Division should have at least recommended a write-off of the overpayment, or even write-off the overpayment altogether under subsection 56(1)(f)(ii) of the *Employment Insurance Regulations* (Regulations).

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<sup>1</sup> *Maung v Canada (Attorney General)*, 2020 FC 74, at para. 10.

<sup>2</sup>

[13] I addressed this issue in my leave to appeal decision dated June 11, 2020. While there is nothing that prevents the General Division from recommending a write-off, it does not have any authority to write-off any overpayments.

[14] Subsection 56(1)(f)(ii) of the Regulations allows the Respondent, the Canada Employment Insurance Commission (Commission), to write off amounts payable under sections 43, 45, 46, 46.1 or 65 of the *Employment Insurance Act* if the repayment would result in undue hardship to the debtor.

[15] The authority to write-off overpayments resides exclusively with the Commission. Section 56 of the Regulations reads, “A penalty ... or an amount payable ... may be written off **by the Commission** if ...” (my emphasis).

[16] Neither the *Employment Insurance Act* nor the Regulations confer any authority on the Social Security Tribunal to make any write-offs. So, the General Division did not err by not writing off the payment. It simply did not have authority to do this.

[17] The Commission confirms that it has not made any decision regarding a write-off of any overpayment under subsection 56(1)(f)(ii) of the Regulations. It remains open for the Claimant to pursue this avenue.

#### **Steps for seeking a write-off of an overpayment because of financial hardship**

[18] The Commission states that the Claimant may ask for a write-off of her overpayment for financial hardship. This would require her to:

1. contact Canada Revenue Agency’s Management Call Centre and
2. specifically ask for a “write-off of her overpayment because of financial hardship”

It is not sufficient just to ask for a write-off. The Claimant has to specify that the request for a write-off of the overpayment is **due to financial hardship**.

[19] The Canada Revenue Agency (CRA) would then assess the Claimant’s financial situation. The Claimant would have to provide information regarding her financial situation.

[20] Then, the CRA would make a recommendation to the Commission's Chief Financial Officer Branch. The Branch is a unit of the Commission. It has the authority to make a decision to write off debts.

[21] All of this information is set out in detail in the Commission's submissions at page AD11-4. It includes contact information for Canada Revenue Agency's Management Call Centre.

### **Calculation of the Overpayment**

[22] Finally, the Claimant questions the amount of the overpayment. She is not challenging the amount, but is questioning how the Commission calculated it. The Commission set out its calculation at document AD2 of the hearing file.

### **CONCLUSION**

[23] I find that the General Division did not make any errors under section 58(1) of the DESDA. Therefore, the appeal is dismissed. It remains open for the Claimant to seek a write-off because of financial hardship.

Janet Lew  
Member, Appeal Division

HEARD ON:	August 21, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. J., Appellant  Isabelle Thiffault and Robert Lalonde, Representatives for the Appellant