



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MM v Canada Employment Insurance Commission*, 2021 SST 208

Tribunal File Number: AD-21-131

BETWEEN:

M. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: May 20, 2021

DECISION AND REASONS

DECISION

[1] I am refusing the application for leave to appeal.

OVERVIEW

[2] The Applicant, M. M. (Claimant), was informed by his employer in March 2020 that he was laid off. He applied for Employment Insurance benefits and began to receive the Employment Insurance Emergency Response Benefit (ERB benefits) on March 29, 2020. The Respondent, the Canada Employment Insurance Commission (Commission) promptly advanced him \$2,000.00 (advance) against his future entitlement to ERB benefits.

[3] The Commission paid the Claimant for the weeks of March 29 and April 5, 2020, but then stopped making payments beginning with the week of April 12, 2020. This was because it discovered that the employer was still paying the Claimant beyond the original lay-off date.

[4] The Claimant's last day of work was actually June 6, 2020. The Claimant renewed his claim effective June 7, 2020, but the Commission did not begin paying him until the week of June 14, 2020. It paid him ERB benefits of \$500.00 per week from June 14, 2020, to October 3, 2020, except for the weeks of August 23 and August 30, 2020.

[5] The Commission decided that it had overpaid the Claimant by the amount of the \$2000 advance. It recovered a portion of the advance but not all of it. The Commission required the Claimant to repay an additional \$500.00. The Claimant disagreed, believing that he had repaid everything he owed. He asked the Commission to reconsider, but it would not change his decision. It maintained that he had to finish repaying the advance. It also said that he had to repay the benefits he received for the weeks of March 29 and April 5, 2020.

[6] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now seeking leave to appeal.

[7] The Claimant has no reasonable chance of success. He has not made out an arguable case that the General Division acted unfairly or made an error of fact.

PRELIMINARY MATTERS

[8] I invited the Claimant and the Commission to a May 11, 2021, case conference to clarify information in the Commission's reconsideration file. At the case conference, the Commission confirmed that the \$2000.00 advance does not appear in the schedule of payments at GD3-22 (Schedule). However, it referred me to the attestation certificate of an Emergency Response Benefit screen shot, found at GD3-20. The Commission noted that the screen shot shows that it made a \$2000.00 payment on April 6, 2020. The Commission made the advance payment before the period covered by the Schedule.

[9] The Commission also stated that it paid the Claimant for the weeks of March 29 and April 5, but that the Claimant was not entitled to those payments. The Schedule shows that the Commission did not pay a benefit for the next week, the week of April 12, 2020. The Schedule then jumps to the week of June 14, 2020, where it records a benefit payment to the Claimant. This was the first benefit the Commission paid the Claimant after his interruption of earnings.

[10] The weeks of August 23 and August 30, 2020, each show a \$500.00 payment in the deduction column. The Commission clarified that this means that it did not pay the Claimant his regular \$500.00 weekly payment in each of these weeks. Instead, the Commission applied each \$500.00 payment to reduce the amount of the advance that the Claimant still owed.

[11] The Commission said that it had not paid the Claimant for the week of June 7, 2020, because it was the Claimant's waiting period.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[12] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is an arguable case. This would be some argument that the Claimant could make and possibly win.¹

¹ This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.

[13] “Grounds of appeal” means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:²

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

ISSUES

[14] Is there an arguable case that the General Division treated the Claimant unfairly by not letting him speak about various government actions and errors in how his taxes were treated?

[15] Is there an arguable case that the General Division made an error of fact by finding that the Claimant still owes the Commission \$500.00 as a repayment of the advance?

[16] Is there an arguable case that the General Division should have considered whether the Claimant must also repay other benefits?

ANALYSIS

Issue 1: Fairness

[17] There is no arguable case that the General Division acted unfairly.

[18] The Claimant argued that it was unfair that the General Division did not give him a chance to speak about how his taxes were treated (or affected), or about other government actions with which he disagrees.

[19] However, the General Division was limited to considering the issues arising from the reconsideration decision.³ It had no authority to make decisions about Canada Revenue Agency decisions, or about any of these other matters. That means that the Claimant’s views on other

² This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act*.

³ *Employment Insurance Act* (EI Act), sections 112 and 113.

government actions or information about the treatment of his taxes are not relevant to the General Division decision. None of this information could have changed the decision.

[20] Therefore, it was not unfair for the General Division to refuse to hear or consider these matters.

Issue 2: Overpayment of the advance

[21] The General Division said that the Claimant did not dispute that the employer paid him from the date of his lay-off until June 6, 2020. The Claimant has not suggested that the General Division got this wrong. The Claimant did not argue in this appeal that he should have been able to receive ERB benefits at the same time that his employer was paying him.

[22] However, the Claimant states that the Commission told him he would be entitled to benefits as of June 7, 2020,⁴ but he never received that week of benefits. He says that the Commission's accounting is confusing, and he argues that he has already paid back what he owes.

[23] However, the Claimant did not point to any evidence suggesting that he did not receive a \$2000.00 advance or that the Commission has already recovered more than \$1500.00 of the advance. He did not say how the General Division ignored or misunderstood any of the evidence.

[24] There is no arguable case that the General Division *based its decision* on an important error of fact. The General Division did make one error of fact, but the decision did not depend on that error. The error did not affect the outcome.

[25] The General Division misunderstood part of the Commission's evidence. According to the General Division's understanding, the Commission did not pay the Claimant benefits in the weeks of April 12, 2020, August 23, 2020, and August 30, 2020. Instead, it recouped the \$500.00 benefit from each of these weeks of benefits to pay down the \$2000.00 advance.

⁴ GD3-40-42.

[26] In fact, the Commission recouped \$500.00 from August 23 and August 30, 2020 and the week of **June 7, 2020** (not April 12, 2020).⁵ June 7, 2020 is the week the Claimant believes he should have received benefits. The reason the Commission made no payment in the week of April 12, 2020, was that the Claimant was not entitled to benefits that week.⁶ The Claimant's employer was still paying him at the time. The Commission did not withhold an April 12, 2020, benefit to reduce the balance owing of the \$2000.00 advance.

[27] While I have found an error in the General Division's understanding of the evidence, there is no arguable case that this error affected the decision outcome. The amount the Commission recouped remains the same, regardless of whether the General Division understood that the deduction had been taken from the week of April 12, 2020, or whether it had properly understood that it was taken from the week of June 7, 2020.

[28] Unfortunately, the case conference muddied the waters. The Commission stated at the Appeal Division case conference that the Claimant was not paid benefits for the week of June 7, 2020, because this would have been the week of his waiting period. This was incorrect.

[29] New provisions in the EI Act state that the waiting period is waived for the ERB, where the benefit period begins before October 25, 2020.⁷ The Claimant was entitled to benefits for the week of June 7, 2020, and he would have been paid benefits for that week, but the Commission instead recovered the June 8, 2020, benefits to reduce the amount owing of the advance.

[30] Despite its error, the General Division did not make a mistake in how it calculated the amount of the \$2000.00 recovered by the Commission. It understood that the Commission recovered three weeks of benefits totalling \$1500.00, which the Claimant would have received if not for the advance.

[31] In other words, I have found no error in how the General Division calculated the amount the Claimant still owes to retire the advance overpayment. The Commission recovered \$1500.00 of the \$2000.00 advance, leaving \$500.00 outstanding.

⁵ GD4-4, unnumbered para 3; see also GD3-40.

⁶ EI Act, section 153.9 (1).

⁷ EI Act, section 153.191(1).

Issue 3: Failure to consider additional overpayment

[32] The General Division appears to have considered how much of the \$2000.00 advance had not been repaid. It did not look at whether the Commission had overpaid the Claimant for March 29 and April 5, 2020, as well.

[33] Neither party specifically argued that the General Division should have considered this additional overpayment, and not just the overpayment from the advance. However, the Commission argued that the Claimant must pay back the final \$500.00 of the advance, and also pay back \$500.00 for each of the weeks of March 29 and April 5, 2020.

[34] The Commission's arguments presume that I have the jurisdiction to consider the entire overpayment. However, I have no way to consider any overpayment outside the advance overpayment unless I can find an arguable case that the General Division failed to exercise its jurisdiction.

[35] There is no arguable case that the General Division made an error of jurisdiction by considering only the advance, and how much of the advance the Claimant had not repaid.

[36] The original decision of the Commission was the Notice of Debt of December 12, 2020. This notice is for a debt of \$2000.00, and it states on its face that an overpayment resulted because the Claimant was not entitled to the advance payment.

[37] The Claimant specifically asked for a reconsideration of the \$2000.00 Notice of Debt decision. He received a January 19, 2021, reconsideration decision referring to the December 12, 2020 (Notice of Debt) decision. However, the reconsideration decision also identified a new issue. This second issue concerned another overpayment related to the benefits received by the Claimant for the weeks of March 29 and April 5, 2020.

[38] The second issue was not in the original decision. Nor did the Claimant raise it as an issue in his request for reconsideration. There is no indication that the Commission ever "reconsidered" the second issue. The Commission inserted the decision about the overpayment for March 29 and April 5, 2020, into the January 19, 2021, letter. However, this was the first decision on this issue, and not a reconsideration. The fact that the Commission included a second

decision in the same letter with a reconsideration decision does not make the second decision a reconsideration.

[39] The General Division did not consider whether the Claimant was liable to repay any amount connected to the weeks of March 29 and April 5, 2020. However, there is no arguable case that this was an error of jurisdiction or of fact. The General Division may only decide those issues that arise from a substantive reconsideration.⁸

[40] The Claimant has no reasonable chance of success in this appeal.

CONCLUSION

[41] I am refusing the application for leave to appeal.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	M. M., Self-represented
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⁸ EI Act, section 113.