



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *CS v Canada Employment Insurance Commission*, 2021 SST 316

Tribunal File Number: AD-21-219

BETWEEN:

C. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 2, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant (Claimant) claimed Employment Insurance (EI) critically ill child benefits from September 22, 2019, after her child was born prematurely. Later, she claimed Québec Parental Insurance Plan (QPIP) benefits from December 15, 2019, to September 19, 2020. She then received EI sickness benefits from September 20, 2020, after an injury that kept her from returning to work.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), initially extended the benefit period to allow the Claimant to receive sickness benefits. The Commission determined that it could extend it because there was still a week of benefits payable—that of September 13 to 19, 2020. So, the Commission paid sickness benefits to the Claimant from September 20 to December 12, 2020.

[4] The Commission later changed its decision when it saw that the Claimant had received QPIP benefits for the week of September 13 to 19, 2020. Because of the change to the end date of the QPIP benefits, the Commission decided that the 15-week extension to receive sickness benefits could no longer be allowed, since the criteria were no longer met. This means that the Claimant was overpaid.

[5] The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[6] The General Division found that the benefit period could not be extended. It also found that the Claimant was not entitled to receive EI sickness benefits from September 20, 2020.

[7] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She argues that the Commission clearly made a mistake in processing her file and that she would not have claimed benefits if the Commission had properly informed her.

[8] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[9] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[10] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[11] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

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.

[12] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a

reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[13] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[14] The Claimant argues that the Commission clearly made a mistake in processing her file and that she would not have claimed benefits if the Commission had properly informed her.

[15] The General Division found that the benefit period could not be extended and that the Claimant was not entitled to receive EI sickness benefits from September 20, 2020. It was of the view that the Commission had access to the Claimant's QPIP claim information and that a simple check could have prevented the mistake.

[16] Although I am sympathetic to the Claimant's situation, the Federal Court of Appeal has clearly established that a claimant who receives money without being entitled to it, **even as a result of a mistake by the Commission**, is not excused from having to repay it.¹

[17] The Claimant argues that she suffered damages because the Commission misinformed her and that, had she been properly informed, she would not have claimed benefits.

[18] Unfortunately for the Claimant, I do not have jurisdiction to order compensation for any damages she suffered, even if I were to find that the Commission misinformed her. It is an issue that must be debated in another forum.²

¹ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

² *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.

[19] Like the General Division, I invite the Commission to formally respond to the Claimant's request for write-off, if it has not already done so, considering that the overpayment does not appear to be due to a mistake by the Claimant or to a false or misleading statement.³ Should the Commission refuse to allow the write-off, the Claimant could turn to the Federal Court, which has exclusive jurisdiction to hear an appeal on the issue of a write-off.⁴

[20] In her application for leave to appeal, the Claimant has not identified any reviewable errors, such as issues of jurisdiction or any failure by the General Division to observe a principle of natural justice. He [*sic*] has not identified any errors in law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[21] For the above-mentioned reasons, and after reviewing the appeal file and the General Division decision and considering the Claimant's arguments in support of her application for leave to appeal, I must find that the appeal has no reasonable chance of success.

CONCLUSION

[22] Leave to appeal is refused.

[23] I recommend that the Commission formally respond to the Claimant's request for write-off within 30 days after this decision, if it has not already done so, considering that the overpayment does not appear to be due to a mistake by the Claimant or to a false or misleading statement.

³ See section 56 of the *Employment Insurance Regulations*.

⁴ *CB v Canada Employment Insurance Commission*, 2020 SST 226; *BP v Canada Employment Insurance Commission*, 2019 SST 124.

[24] Should the Commission refuse to allow the write-off, the Claimant could turn to the Federal Court, which has exclusive jurisdiction to hear an appeal on the issue of a write-off.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	C. S., self-represented
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