



Citation: *KN v Canada Employment Insurance Commission*, 2021 SST 449

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 27, 2021
(GE-21-743)

Tribunal member: Shirley Netten

Decision date: August 23, 2021

File number: AD-21-215

Decision

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

Overview

[2] The Claimant began receiving regular employment insurance (EI) benefits in October 2020, following an automatic transfer from Emergency Response Benefits. Although Service Canada was aware that the Claimant was also receiving workers' compensation payments, Service Canada did not allocate these payments against his EI claim until March 2021. This resulted in an overpayment.

[3] The General Division dismissed the Claimant's appeal. The General Division decided that the workers' compensation payments were earnings, and that they were correctly allocated.

[4] The Claimant requested permission to appeal to the Appeal Division. Following a case conference, the Commission advised that, under its policy, the allocation should not have been applied retroactively, and no overpayment should have been created, in the specific circumstances of this case.¹ The Commission will remove the overpayment upon release of this decision.

Issue

[5] Is there an arguable case that the General Division made an error of fact, law or jurisdiction, or proceeded in a manner that was unfair?

Analysis

[6] I can grant permission to appeal only if the appeal has a reasonable chance of success.² This requires an arguable case that the General Division made certain types of errors.³

[7] The Claimant has not identified any errors made by the General Division. He argued that he should not be responsible for the overpayment, but this was a matter for

¹ This policy is found in Chapter 17 of the Commission's *Digest of Benefit Entitlement Principles*.

² See section 58(2) of the *Department of Employment and Social Development Act*.

³ See section 58(1) of the *Department of Employment and Social Development Act*.

the Commission to decide (not the General Division).⁴ In light of the Commission's recent decision to remove the overpayment, the Claimant no longer wishes to pursue this appeal.

[8] Having reviewed the General Division decision, I see no arguable case that the General Division erred in its decision that the Claimant's workers' compensation payments were earnings, to be allocated to the weeks when the payments were paid. The decision is consistent with the evidence on file and the provisions in the *Employment Insurance Regulations* about earnings and their allocation.⁵ To be clear, the General Division decision does not fetter the Commission's discretion to remove the Claimant's overpayment.

Conclusion

[9] Permission to appeal is refused.

Shirley Netten
Member, Appeal Division

⁴ Even if the Commission had previously made a decision about recovering the overpayment, it would not have been reviewable by the General Division: see section 112.1 of the *Employment Insurance Act*.

⁵ See sections 35(2(b) and 36(12(d) of the *Employment Insurance Regulations*.