



Citation: *CC v Canada Employment Insurance Commission*, 2021 SST 674

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** C. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated October 4, 2021  
(GE-21-1543)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** November 16, 2021

**File number:** AD-21-348

## Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

## Overview

[2] The Applicant (Claimant) received 16 weeks of Employment Insurance Emergency Response Benefits (EI ERB) from the week of March 15, 2020 to the week ending July 18, 2020. The Claimant also received Canada Emergency Response Benefits (CERB) from the *Canada Revenue Agency* (CRA) from March 15, 2020 to April 11, 2020.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant was not eligible for EI ERB benefits while receiving the CERB. He was overpaid \$2000.00 in EI ERB for the period from March 15, 2020 to April 11, 2020.

[4] The Commission also determined that the Claimant was overpaid a total of \$2000.00 for the weeks of June 21, 2020 to July 12, 2020, after consideration of his earnings.

[5] Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[6] The General Division found that the Claimant was overpaid \$2000.00 arising from the \$500.00 weekly EI ERB benefits received from March 15, 2020 to April 5, 2020, while he was also in receipt of the CERB. It also found that the Claimant could not be deemed to meet the income eligibility requirements for the weeks of June 21, 2020, June 28, 2020, July 5, 2020 or July 12, 2020. Therefore, the Claimant was overpaid a total of \$2000.00 for these weeks.

[7] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division's decision is based on the law but does not take into account the unique facts surrounding his case.

[8] A letter was sent to the Claimant to inquire what facts were not taken into account by the General Division. In his reply, the Claimant puts forward that he took the necessary steps to make sure he was entitled to the money he received. Now he is in the exact situation he tried to avoid. He also puts forward that the income he received was before taxes and is not enough money to live on, as it amounts to about \$250.00 per week.

[9] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[10] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issue**

[11] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## **Analysis**

[12] 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 that:

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.

[13] 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 on the hearing of the appeal on the merits. At the leave to

appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[14] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

**Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[15] In support of his application for leave to appeal, the Claimant submits that the General Division's decision is based on the law but does not take into account the unique facts surrounding his case.

[16] The Claimant argues that he took the necessary steps with the Commission to make sure he was entitled to the money he received. Now he is in the exact situation he tried to avoid. He also puts forward that the income he received was before taxes and was not enough money to live on, as it amounts to about \$250.00 per week.

[17] Before the General Division, the Claimant agreed that he received both EI ERB payments and CERB payments for the period of March 15, 2020 to April 11, 2020. He did not dispute the \$2000.00 overpayment.

[18] As stated by the General Division, claimants are not eligible for EI ERB benefits, while in receipt of the CERB.<sup>1</sup>

[19] Before the General Division, the Claimant also did not dispute that he did not meet the deemed income eligibility requirement. The Claimant put forward that \$1000.00 over 4 weeks is not enough for an individual to live on as it amounts to about \$250.00 per week. He argued that the law should be

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<sup>1</sup> See section 153.9(2) of the *Employment Insurance Act*.

interpreted on a case-by-case basis. The Claimant submits that it is inequitable that the Commission is now asking for that money back.

[20] As stated by the General Division, the Federal Court of Appeal has clearly and consistently found that a claimant who receives money to which they are not entitled, **even as a result of a mistake by the Commission**, is not excused from having to repay it.<sup>2</sup>

[21] Furthermore, the emergency legislation does not allow discrepancy and does not give the Tribunal discretion in its application.<sup>3</sup>

[22] I understand that the Claimant took the necessary steps with the Commission to make sure he was entitled to the money he received. The fact remains that neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

[23] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## Conclusion

[24] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>2</sup> *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

<sup>3</sup> *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.