



Citation: *MB v Canada Employment Insurance Commission*, 2022 SST 91

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	M. B.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated December 31, 2021 (GE-21-2395)
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Tribunal member:	Janet Lew
Decision date:	February 22, 2022
File number:	AD-22-51

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

Overview

[2] The Applicant, M. B, (Claimant), is appealing the General Division decision. The General Division agreed with the Claimant that the long delay by the Respondent, the Canada Employment Insurance Commission (Commission), in calculating his claim created a large overpayment of Employment Insurance benefits. The General Division found that it did not have any power to waive the overpayment of benefits. This left the Claimant with a large overpayment to repay.

[3] The Claimant argues that the General Division made factual errors. He says that the General Division failed to consider certain facts.

[4] I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.²

Issue

[5] Is there an arguable case that the General Division failed to consider some of the evidence?

Analysis

[6] The Appeal Division must grant permission to appeal unless the appeal “has no reasonable chance of success.” A reasonable chance of success exists if there is a

¹ Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I have to refuse permission if I am satisfied, “that the appeal has no reasonable chance of success.”

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

possible jurisdictional, procedural, legal, or certain type of factual error that the General Division made.³

[7] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If the Appeal Division decides that the General Division made an error, it then decides how to fix that error.

Is there an arguable case that the General Division failed to consider some of the evidence?

[8] The Claimant argues that the General Division failed to consider the following:

- He provided accurate information about his earnings to the Commission
- The Commission's agent who prepared the interim record of employment made an error
- The Commission's agent miscalculated his benefit rate
- The agent's error led to an overpayment of benefits

[9] The Claimant suggests that, if the General Division had considered this evidence, it would have accepted that he should not be responsible for any overpayment that he owes. The Claimant is asking the Appeal Division to waive the overpayment.

[10] The General Division acknowledged that the Claimant had accurately reported his earnings to the Commission.⁴ The General Division did not determine or make any findings about whether the agent had miscalculated the Claimant's benefit rate.

³ See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that had been made in a perverse or capricious manner, or without regard for the evidence before it.

⁴ See General Division decision at para 13.

[11] Even so, the agent's role in calculating the Claimant's benefit rate and the Commission's delay in correcting the benefit rate had no bearing on the General Division decision. The General Division had no power or authority to waive or write off the overpayment. Any errors that the Commission might have made, or the Commission's delay in recalculating the Claimant's weekly benefit rate, was irrelevant.

[12] In short, none of these facts would or could have changed the General Division decision on the overpayment issue. The Claimant was without blame in the creation of the overpayment, but that did not change the fact that the General Division could not waive or reduce the amount of the overpayment.

[13] I am not satisfied that the Claimant has an arguable case that the General Division failed to consider some of the evidence.

The Claimant's options

[14] The Claimant suggests that he should not bear any fault for the overpayment.

[15] The General Division did not have any authority to provide any relief to the Claimant. It could not reduce or waive the overpayment. It explained what the Claimant could try to do to write off or reduce the overpayment.

[16] In terms of any potential relief, the Claimant has two options:

- i. He can ask the Commission to consider writing off the debt because of undue hardship. If the Claimant does not like the Commission's response, his option then is to appeal to the Federal Court, or
- ii. He can contact Canada Revenue Agency's Debt Management Call Centre at 1-866-864-5823 about writing off the debt or about a repayment schedule.

[17] Often, the Commission will refer claimants to the Debt Management Centre to help determine whether they are facing financial hardship.

Conclusion

[18] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division