



Citation: *NS v Canada Employment Insurance Commission*, 2022 SST 740

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: N. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 2, 2022
(GE-22-242)

Tribunal member: Jude Samson

Decision date: August 9, 2022

File number: AD-22-334

Decision

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

Overview

[2] N. S. is the Claimant in this case. The Canada Employment Insurance Commission paid her Employment Insurance Emergency Response Benefits (EI-ERB) from March 22 until September 12, 2020. Importantly, the Commission made a four-week advance payment of \$2,000 in April 2020.

[3] The Claimant's file is complex. As a result, it's worth summarizing the history of her claim in some detail.

[4] Somewhere in the middle of her claim, the Claimant became entitled to work-sharing benefits instead of to EI-ERB. This change is especially challenging because:

- the Commission delayed processing the change until November 2020;
- the parties disagreed about when the change took effect; and
- a change of eligibility dates requires a recalculation of different benefits, including possible overpayments and underpayments.

[5] The Claimant's weekly benefit rate was higher for EI-ERB than for work-sharing benefits. Because of the Commission's delays, the Claimant received benefits at the EI-ERB rate throughout her claim. The Commission says it wrote off (cancelled) the overpayment created by this rate adjustment.¹

[6] However, the Commission handled the four-week advance payment somewhat differently. Initially, the Commission said that it would recover the \$2,000 advance payment from April 2020 by withholding payments for the weeks starting June 14,

¹ See page GD4-3 of the appeal record.

June 21, August 2, and August 9, 2020. The parties agree that the Commission didn't pay any additional EI-ERB to the Claimant during these weeks.

[7] However, for the Commission to **recover** part of the advance payment during a particular week, the Claimant had to be **entitled** to receive EI-ERB during that week. The Claimant's changing entitlement to EI-ERB over time, based on the different decisions in her file, has caused a lot of confusion.

[8] As part of the Commission's reassessment in November 2020, it decided that the Claimant was entitled to work-sharing benefits (and **not** EI-ERB) from May 3, 2020.²

[9] In other words, the Claimant was overpaid EI-ERB during those four weeks in June and August 2020 (having received the payment in April 2020) and underpaid work-sharing benefits. Instead of offsetting one against the other, the Commission paid the Claimant \$948 in work-sharing benefits and sent her a \$2,000 notice of debt for EI-ERB.

[10] The Claimant appealed the Commission's decision to the Tribunal's General Division. It changed her EI-ERB eligibility dates yet again. The General Division found that the Claimant was entitled to EI-ERB until July 4, 2020.

[11] As a result, the Commission was able to recover half of the advance payment from April 2020 because it had withheld EI-ERB payments during the weeks starting June 14 and June 21, 2020. The Commission couldn't recover the other half of the advance payment because it had not withheld payments during any other weeks between March 22, and July 4, 2020.

[12] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward.

[13] Unfortunately for the Claimant, I've decided that her appeal has no reasonable chance of success. As a result, I can't give her permission to appeal.

² The Commission's initial decision starts on page GD3-68.

Preliminary issue: the Claimant's new evidence

[14] I did not consider the Claimant's new evidence.

[15] New evidence is evidence that the General Division didn't have at the time it made its decision. In this case, the Claimant's new evidence includes bank statements.³

[16] There are some exceptions to the general rule against considering new evidence but none apply in this case.⁴ Besides, the Claimant's bank statements add little to the evidence that is already in the file or to the issues in dispute.

Issues

[17] This decision focuses on two issues:

- a) Could the General Division have based its decision on an important error about the facts of the case when it concluded that the Commission had not recovered EI-ERB payments from her in August 2020?
- b) Is there any other reason for giving the Claimant permission to appeal?

Analysis

[18] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[19] The legal test that the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?⁵ If the appeal has no reasonable chance of success, then I cannot give the Claimant permission to appeal.⁶

³ See pages AD8-21.

⁴ Although the context is somewhat different, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal described in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at paragraph 8.

⁵ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

⁶ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act*.

[20] To decide this question, I focused on whether the General Division could have made a relevant error.⁷

The appeal has no reasonable chance of success

- **The General Division did not base its decision on an important error about whether the Commission had recovered payments from her in August 2020**

[21] The Claimant complains that the General Division contradicted itself in the following two paragraphs of its decision:

| Paragraph 10 | Paragraph 35 |
|--|---|
| On April 6, 2020, [the Claimant] received an advance payment of \$2,000, which was recovered from her benefits for the weeks of June 14, 2020, June 21, 2020, August 2, 2020, and August 9, 2020. The Commission informed the Claimant that these payments were being withheld to repay the \$2,000 advance payment. | There is no evidence that the Claimant repaid the second half of the EI-ERB payment in the amount of \$1,000 before her claim was converted to work-sharing benefits starting July 5, 2020. |

[22] The Claimant’s argument has no reasonable chance of success.

[23] Respectfully, to recover parts of the April 2020 advance payment, the Commission had to withhold EI-ERB payments for a week when the Claimant was entitled to that benefit. However, her EI-ERB eligibility changed over time, with the different decisions that were made in her file.

[24] The Commission initially considered that it had recovered the entire advance payment by withholding payments that it owed to the Claimant over two weeks in June and two weeks in August 2020.

[25] However, after reassessing her case in November, the Commission concluded that the Claimant wasn’t entitled to EI-ERB after May 3, 2020. Since the Claimant

⁷ The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act*.

wasn't entitled to EI-ERB in June and August 2020, the Commission's attempt to recover the advance payment became unsuccessful.

[26] In short, the Commission paid the Claimant no EI-ERB for the weeks starting June 14, June 21, August 2, and August 9, 2020, and she wasn't entitled to receive any EI-ERB for those weeks either.

[27] But things changed again when the General Division later decided that the Claimant was entitled to EI-ERB until July 4, 2020. This meant that the Commission had successfully recovered half the April 2020 advance by withholding payments during the weeks of June 14 and June 21, 2020.

[28] The Commission was still unable to recover the other half of the advance from the weeks starting August 2 and August 9, 2020. Although the Commission didn't pay the Claimant EI-ERB during those weeks, she wasn't entitled to it either.

[29] As a result, the Claimant's argument has no reasonable chance of success. The paragraphs above aren't contradictory. Instead, they reflect the changing situation about the Commission's recovery of the advance payment based on the different decisions that were made in her file and her entitlement to one benefit versus the other.

[30] To be clear, it isn't as though the Claimant received no benefits for the weeks of August 2 and August 9, 2020. Instead, she was entitled to work-sharing benefits during those weeks. The Commission says it paid those benefits to the Claimant in November 2020, at the time it reassessed her file.⁸

[31] Overall, the Claimant was paid 17 weeks of EI-ERB, including the four-week advance paid in April 2020. Half of that amount is assigned to the weeks starting June 14 and June 21, 2020. The other half of the advance payment can't be assigned to any other week because the Claimant's entitlement to EI-ERB ended on July 4, 2020.

⁸ See pages GD3-72 and GD3-75.

[32] A summary of her entitlement is as follows:⁹

| Week # | Starting Date | Date Paid | Advance |
|---------------|----------------------|----------------------------|----------------|
| 1 | 22-Mar-2020 | 10-Apr-2020 28-Apr-2020 | |
| 2 | 29-Mar-2020 | 10-Apr-2020 | |
| 3 | 4-Apr-2020 | 10-Apr-2020 | |
| 4 | 12-Apr-2020 | 24-Apr-2020 | |
| 5 | 19-Apr-2020 | 24-Apr-2020 | |
| 6 | 26-Apr-2020 | 8-May-2020 | |
| 7 | 3-May-2020 | 8-May-2020 | |
| 8 | 10-May-2020 | 22-May-2020 | |
| 9 | 17-May-2020 | 22-May-2020 | |
| 10 | 24-May-2020 | 5-Jun-2020 | |
| 11 | 31-May-2020 | 5-Jun-2020 | |
| 12 | 7-Jun-2020 | 19-Jun-2020 | |
| 13 | 14-Jun-2020 | 6-Apr-2020 | ✓ |
| 14 | 21-Jun-2020 | 6-Apr-2020 | ✓ |
| 15 | 28-Jun-2020 | 3-Jul-2020 | |

⁹ This is based on information from pages GD3-74 and GD3-75.

– **There are no other reasons for giving the Claimant permission to appeal**

[33] In the remainder of her arguments, the Claimant is essentially airing grievances, some of which are directed at the General Division, but most of which are directed at the Commission. For example:¹⁰

- The Commission has been inconsistent about cancelling some overpayments and not others;
- She should not be held responsible for the Commission's mistakes and delays (or those of her employer);
- The Commission should not have made advance payments;
- The Commission provided her with misleading and confusing information and made things overly complex;
- It's unfair that she has just 30 days to ask the Commission to reconsider a decision, whereas the Commission has three years to reassess her file;
- Rather than giving her any underpayments, the Commission should have used this money to offset any overpayments; and
- The Commission and General Division could have explained themselves more clearly.

[34] For all these reasons, the Claimant has lost trust in the Commission. She also says that the remaining \$1,000 should be written off or deducted from any future EI payments that she's owed.

[35] Some of the Claimant's complaints are legitimate. However, none of them amount to relevant errors that would allow me to intervene in her case.¹¹

¹⁰ See especially documents AD1 and AD9.

¹¹ See footnote 7.

[36] The Tribunal must apply the law when deciding whether a person is entitled to benefits. This means that the Tribunal cannot give a person benefits because of misinformation or poor service that they received from the Commission, or because of their financial need.¹²

[37] In addition, the law gives the Commission broad powers to reconsider a person's claim and to change a past decision.¹³ Similarly, only the Commission has the power to cancel the Claimant's debt.¹⁴ The Tribunal has no power to review those decisions.

[38] As a result, I see no other reason for giving the Claimant permission to appeal.

[39] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹⁵ The General Division summarized the law and used evidence to support its decision. I didn't find evidence supporting the Claimant's appeal that the General Division might have ignored or misinterpreted.

[40] I sympathize with the Claimant's circumstances and regret the stress that this issue has caused her.

Conclusion

[41] I have concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

¹² See, for example, *Nadji v Canada (Attorney General)*, 2016 FC 885 at paragraph 13, *Canada (Attorney General) v Shaw*, 2002 FCA 325, and *Faullem v Canada (Attorney General)*, 2022 FCA 29 at paragraph 46. The *Faullem* decision is currently available in French only. The Federal Court of Appeal should provide an English version shortly.

¹³ See section 52 of the EI Act.

¹⁴ See the General Division decision at paragraph 41, along with sections 112.1, 153.1306 to 153.1307 of the EI Act and section 56 of the *Employment Insurance Regulations*.

¹⁵ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.