



[TRANSLATION]

Citation: *YT v Canada Employment Insurance Commission*, 2022 SST 895

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

# **Leave to Appeal Decision**

**Applicant:** Y. T.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
August 23, 2022 (GE-22-2092)

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**Tribunal member:** Pierre Lafontaine  
**Decision date:** September 14, 2022  
**File number:** AD-22-642

## **Decision**

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

## **Overview**

[2] On May 2, 2020, the Applicant (Claimant) applied for benefits. The Respondent (Commission) established a benefit period for the Employment Insurance Emergency Response Benefit (EI ERB). He received a \$2,000 advance payment on May 11, 2020.

[3] On May 6, 2022, the Commission issued a reconsideration decision telling the Claimant that he had to pay back the \$2,000 advance payment that was made to him when his benefit period was established, since he had gone back to work on June 1, 2020. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Commission had correctly established a benefit period for the EI ERB. It found that the Claimant had received more benefits than he should have after he went back to work and that he had to pay back the \$2,000 advance payment.

[5] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. He argues that the General Division processed his file only as an overpayment and that it did not take into account the Commission's mistakes that stopped him from choosing the options that were available to him at the time to receive benefits.

[6] 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.

[7] 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

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

## Analysis

[9] 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.

[10] 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 has to be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case. Instead, he has to establish that the appeal has a reasonable chance of success. In other words, he has to show that there is arguably a reviewable error based on which the appeal might succeed.

[11] 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?**

[12] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. He argues that the General Division processed his file only as an overpayment and that it did not take into account the Commission's mistakes that

stopped him from choosing the options that were available to him at the time to receive benefits.

[13] On May 2, 2020, the Claimant made an initial claim for Employment Insurance benefits. An EI ERB claim was made effective May 3, 2020.<sup>1</sup> The Claimant received a total of \$4,000 for the EI ERB. He received a \$2,000 advance payment (4 x \$500) for the period from May 3 to May 30, 2020. He went back to work on June 1, 2020.

[14] Since the Claimant went back to work full-time, he was eligible for only four weeks of the EI ERB while he received a total of eight weeks (4 weeks from May 3, 2020, to May 30, 2020 + 4 weeks of the \$2,000 advance = 8 weeks). Since he was not eligible for the four additional weeks of the advance payment, an overpayment of \$2,000 was correctly established.

[15] I note that the legislation implemented during the pandemic allows the Commission to decide whether a person has received money by way of the EI ERB for which they were not eligible.<sup>2</sup> The legislation also says that the person has to return the amount received as an EI ERB overpayment.<sup>3</sup>

[16] Although I sympathize with the Claimant's situation, the law does not allow any discrepancy and gives the Tribunal **no discretion** to write off the overpayment.<sup>4</sup>

[17] The Claimant says that he was misinformed by the Commission which in turn stopped him from choosing the options that were available to him at the time to receive benefits.

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<sup>1</sup> Between March 15, 2020, and September 26, 2020, all claims for regular or sickness benefits were considered applications for the Employment Insurance Emergency Response Benefit under section 153.1310 of the *Employment Insurance Act* (Act).

<sup>2</sup> See section 153.1303(1) of the Act.

<sup>3</sup> See section 153.1301 of the Act.

<sup>4</sup> *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

[18] The Federal Court of Appeal has established that a claimant who receives money they are not entitled to is not excused from having to repay it, **even if the Commission made a mistake**.<sup>5</sup>

[19] The Tribunal lacks the jurisdiction to order the payment of compensation for damages that the Claimant says he suffered because of the Commission's alleged mistakes. That is an issue that has to be debated in another forum.<sup>6</sup>

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I am of the view that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

## **Conclusion**

[21] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>5</sup> *Lanuzo v Canada (Attorney General)*, FCA 324.

<sup>6</sup> *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.