



Citation: *LK v Canada Employment Insurance Commission*, 2022 SST 922

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** L. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated June 21, 2022  
(GE-22-1104)

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**Tribunal member:** Jude Samson

**Decision date:** September 20, 2022

**File number:** AD-22-443

## **Decision**

[1] L. K. is the Claimant in this case. I am refusing his request for leave (permission) to appeal. This means that his appeal will not proceed.

## **Overview**

[2] The Canada Employment Insurance Commission (Commission) says that it overpaid the Claimant's Employment Insurance (EI) Emergency Response Benefits by \$2,000.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division considered the Claimant's arguments, and dismissed his appeal.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. But his file can move forward only if I give him permission to appeal.

[5] The Claimant argues that he has been a victim of fraud and that the Government manufactured the COVID-19 pandemic. His arguments have no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

## **Issue**

[6] This decision focuses on one issue: Is there an arguable ground on which the Claimant's appeal might succeed?

## **Analysis**

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

[8] 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?<sup>1</sup> If the appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>2</sup>

[9] To decide this question, I focused on whether the General Division could have made a relevant error.<sup>3</sup>

### **The appeal has no reasonable chance of success**

[10] In its decision, the General Division explained why the Commission had to pay EI Emergency Response Benefits to the Claimant, and not EI regular benefits. It also explained how the Commission could only pay benefits to people who had applied for them.<sup>4</sup> Unfortunately, the Claimant did not apply for all the EI Emergency Response Benefits that he could have received, and the deadline to apply for more benefits has now passed.<sup>5</sup>

[11] I cannot intervene in this case because the Claimant's application to the Appeal Division is missing details about the relevant errors that the General Division might have made.<sup>6</sup> For example, what errors of law does the Claimant say the General Division made? Similarly, which of the General Division's findings does the evidence contradict, or fail to support?

[12] I cannot give the Claimant permission to appeal just so that he can repeat arguments that he already made at the General Division level.<sup>7</sup> Yet that seems to be what the Claimant is planning to do here.

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<sup>1</sup> 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.

<sup>2</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>3</sup> The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.

<sup>4</sup> The need to apply for Emergency Response Benefits is set out in section 153.7(1) of the *Employment Insurance Act* (EI Act).

<sup>5</sup> Section 153.8(2) of the EI Act says that a person cannot apply for EI Emergency Response Benefits after December 2, 2020.

<sup>6</sup> This requirement is described in *Pantic v Canada (Attorney General)*, 2011 FC 591 at paragraph 22.

<sup>7</sup> The Federal Court said this in *Canada (Attorney General) v Tsagbey*, 2017 FC 356 at paragraph 83.

[13] As a result, the Claimant's appeal has no reasonable chance of success.

[14] Regardless of the sympathy that I have for the Claimant's circumstances, I cannot bend the legal requirements that apply to his case. Instead, I have to apply the law as it's written, even if the result is harsh, and even if the Commission's delays contributed to his problems.<sup>8</sup>

[15] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.<sup>9</sup> The General Division summarized the law and used evidence to support its decision. I did not find any other reasons for giving the Claimant permission to appeal.

[16] Before closing, I would repeat the information given by the General Division in paragraph 48 of its decision. If he has not done so already, the Claimant can ask both Service Canada and the Canada Revenue Agency to write off (cancel) some or all his debt. I hope that they will consider the circumstances of the case when deciding his request. Specifically, the Claimant was entitled to additional benefits, except that he overlooked the need to apply for them. And if the Commission had informed the Claimant of his debt in a timely way, then he could have claimed these additional benefits.

## Conclusion

[17] 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

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<sup>8</sup> See *Nadji v Canada (Attorney General)*, 2016 FC 885 at paragraph 13 and *Faullem v Canada (Attorney General)*, 2022 FCA 29 at paragraph 46 (the Court should soon translate this decision into English).

<sup>9</sup> 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.