



[TRANSLATION]

Citation: *CM v Canada Employment Insurance Commission*, 2023 SST 354

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

# **Leave to Appeal Decision**

**Applicant:** C. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
January 27, 2023 (GE-22-2878 and GE-22-2879)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 29, 2023

**File numbers:** AD-23-172 and AD-23-173

## Decision

[1] Permission to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant (Claimant) worked for her employer from June 23, 2018, to March 19, 2020. She stopped working for it because of a shortage of work.

[3] On April 8, 2020, she made an initial claim for Employment Insurance (EI) regular benefits. A benefit period was established effective March 22, 2020, so that she could receive the EI Emergency Response Benefit (ERB).

[4] She worked for her employer again from May 29, 2020, to January 9, 2021. She stopped working for it because of a shortage of work.

[5] From February 8, 2021, to February 12, 2022, she had another period of employment with that employer. She stopped working for it because she voluntarily left.

[6] On February 23, 2022, she applied for benefits.

[7] On June 13, 2022, the Commission asked her to pay back an advance payment she had received but was not entitled to. On July 11, 2022, the Commission told her that she was not entitled to EI benefits from February 13, 2022, because she voluntarily left her job without just cause as defined in the law, and that it was not the only reasonable alternative in her case.

[8] The General Division found that the Claimant received 18 weeks' worth of benefits, when she could have received benefits for 16 weeks. It decided that the \$1,000 was an overpayment that the Claimant had to repay.

[9] The General Division found that the Claimant's voluntary leaving was based on a personal choice. It found that she had reasonable alternatives to leaving her job. It decided that the Claimant voluntarily left her job without just cause within the meaning of the law.

[10] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. She argues that the General Division did not consider the seriousness of the situation. She had no choice but to leave her job. As a person of integrity who is honest and has little income, she is dismayed that she has to pay back the money she received during the COVID lockdown.

[11] 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.

[12] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## **Issue**

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

## **Analysis**

[14] 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 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.

[15] An application for permission 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 at the hearing of the appeal on the merits. At the permission to appeal

stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[16] I will give permission 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?**

[17] The Claimant says that the General Division did not consider the seriousness of the situation. She had no choice but to leave her job. As a person of integrity who is honest and has little income, she is dismayed that she has to pay back the money she received during the COVID lockdown.

**– Overpayment – Advance payment**

[18] On April 8, 2020, the Claimant made an initial claim for EI benefits. An EI ERB claim was made effective March 22, 2020.

[19] Since the Claimant was eligible for the EI ERB, she received an initial \$2,000 advance payment once the claim was established. This payment was issued to the Claimant on April 13, 2020.

[20] So, the Claimant received a \$2,000 advance payment and \$7,000 as a result of her reports, for a total of \$9,000. She completed reports for 16 weeks. This means that she could receive \$8,000 in EI ERB (16 × \$500). The Commission determined that she received \$1,000 in benefits that she was not entitled to (\$9,000 – \$8,000 = \$1,000).

[21] I note that the law that came into force during the pandemic allows the Commission to review whether a person has received money by way of the EI ERB that they were not entitled to. The law is clear that the person has to repay what they were overpaid in EI ERB.<sup>1</sup>

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<sup>1</sup> See sections 52 and 153.6(1)(a) of the *Employment Insurance Act*.

[22] Unfortunately, the law does not allow any discrepancy and gives the Tribunal **no discretion**—not even for humanitarian reasons—to write off the amount to be repaid.<sup>2</sup>

[23] This ground of appeal has no reasonable chance of success.

– **Voluntary leaving**

[24] The General Division decided that the Claimant voluntarily left her job. It placed more weight on her initial story, namely that she voluntarily chose to leave her job to retire.

[25] The General Division rejected the Claimant’s explanations that she voluntarily left because of her antagonistic relationship with her manager, particularly the comments she allegedly made to her in late January 2022 or early February 2022.

[26] In doing so, the General Division considered what the Claimant had previously indicated on her application for benefits, in her statements to the Commission (including her request for reconsideration), and in her notice of appeal. The General Division noted that, every time, the Claimant said that she left her job to retire. In its view, the Claimant’s statements were clear on this point.

[27] The General Division particularly relied on one of the Claimant’s statements, in which she talked about the manager’s work as a manager. In that statement, the Claimant said that even though she found her manager [translation] “somewhat unfit” for her position, it was not a big deal and was not the reason she left her job. She reiterated that she left her job to retire and pointed out that there was no [translation] “trigger” behind her leaving.<sup>3</sup>

[28] The General Division found that this statement supported the Claimant’s initial statements that she left her job primarily to retire, and that the manager’s behaviour had nothing to do with that decision.

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<sup>2</sup> *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

<sup>3</sup> See GD3-34 and GD3-35 in file GE-22-2879.

[29] The General Division found that after the Commission had told her she did not have just cause for voluntarily leaving within the meaning of the law, the Claimant raised a different reason than the one she had repeatedly given.

[30] The General Division was not satisfied that the Claimant's working conditions were so unbearable that she had no choice but to leave her job when she did.

[31] The General Division found that the Claimant had alternatives to leaving her job. She could have tried to resolve the problem with her senior manager. She could have looked for a more suitable job before deciding to leave.

[32] I find that the General Division's decision is based on the evidence and the applicable law on voluntary leaving. The Claimant has not identified an error of law or an erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in deciding the issue of voluntary leaving.

[33] Unfortunately for the Claimant, an appeal to the Tribunal's Appeal Division is not a new hearing where she can present evidence again to get a favourable decision.

[34] For the reasons I have mentioned above and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of her application for permission to appeal, I find 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**

[35] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division