



[TRANSLATION]

Citation: *FF v Canada Employment Insurance Commission*, 2023 SST 704

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

# **Leave to Appeal Decision**

**Applicant:** F. F.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated  
January 24, 2023 (GE-22-1683)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** June 2, 2023

**File number:** AD-23-198

## **Decision**

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

## **Overview**

[2] The Applicant (Claimant) worked as a customer service agent for a bank for several years. On July 13, 2017, she was let go.

[3] On March 29, 2019, a settlement was reached in connection with grievances filed by her and her union. In March 2020, she received \$29,013.12 in settlement of the grievances. The employer agreed to pay back the amounts owing to the Respondent (Commission) if necessary. After allocating, the Commission asked to be repaid an overpayment of \$10,243. The Claimant asked it to reconsider.

[4] On November 4, 2020, the Commission reconsidered its initial decision in the Claimant's favour. The evidence shows that she received the \$29,013.12 in compensation for not getting her job back. However, she said that she had not received from the Commission all the money it owed her. She appealed the reconsideration decision to the General Division.

[5] The General Division determined that the \$10,243 owing to the Commission now had to be paid back to the Claimant. However, the Claimant had to pay back \$2,432. It determined that the Claimant had received \$7,436, or \$7,811 less the tax payable. The \$7,811 is what you get after deducting the \$2,432 overpayment. The General Division found that the Commission had paid back the amounts owing to the Claimant.

[6] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. She argues that the General Division based its decision on an important error of fact.

[7] 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.

[8] 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**

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

## **Analysis**

[10] 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.

[11] 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.

[12] 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?**

[13] The Claimant argues that she received only \$7,436. The Commission needed to pay her back \$10,243 in total. She argues that she has not received the remaining \$2,807. She says that the amounts owing by her that the General Division considered in its calculation are the result of a reconsideration request when she was in school and should not be part of the calculation.

[14] As the General Division noted, when the Commission changed its decision on reconsideration, this changed the benefits that the Claimant was entitled to. The Commission had to go back to the initial calculation of benefits. This change affected the benefits payable to the Claimant.

[15] As a result of the reconsideration decision, the Commission needed to pay the Claimant back the \$10,243 it had received from the employer. This amount was related to the claim effective September 3, 2017.<sup>1</sup>

[16] Concerning the benefit period effective November 11, 2018, after reconsideration, the benefit rate went from \$405 to \$307, which is what it was originally. This created an overpayment of \$1,862.<sup>2</sup>

[17] Concerning the benefit period effective September 8, 2019, after reconsideration, the benefit rate went from \$309 to \$271, which is what it was originally. This created an overpayment of \$570.<sup>3</sup>

[18] So, the Commission paid the Claimant back \$7,436 (\$10,243 - \$1,862 - \$570 - \$375 in taxes). The Claimant admits that she received \$7,436 from the Commission.

[19] As a result, I see no reviewable error made by the Commission when it calculated the repayment of the overpayment after reconsidering its initial decision.

---

<sup>1</sup> See the calculation at AD4-5.

<sup>2</sup> See the calculation at AD4-6.

<sup>3</sup> See the calculation at AD4-7.

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the 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**

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

Pierre Lafontaine  
Member, Appeal Division