



Citation: *MV v Canada Employment Insurance Commission*, 2023 SST 866

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

# **Leave to Appeal Decision**

**Applicant:** M. V.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 24, 2023  
(GE-22-3580)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** June 29, 2023

**File number:** AD-23-390

## Decision

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

## Overview

[2] The Applicant (Claimant) applied for regular EI benefits on March 30, 2020. The Respondent (Commission) approved his application for the *Emergency Response Benefits* (ERB), effective March 29, 2020.

[3] The Claimant received a \$2,000 advance payment issued on April 6, 2020. This payment is equal to 4 weeks of the ERB (4 x \$500 = \$2,000). The Claimant was also paid \$500 a week for the claims he submitted for 10 weeks from March 29, 2020, to June 6, 2020 (10 x \$500 = \$5,000). The Claimant stopped submitting claim reports after returning to full-time work on June 7, 2020.

[4] The Commission determined that the Claimant did not collect ERB long enough, so he needs to repay the advance because it represents weeks of ERB for which he is not eligible. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the Claimant received \$7,000 in ERB when he was only entitled to receive \$5,000. It concluded that the Claimant had to repay the \$2,000 overpayment.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that it was unacceptable for the General Division member to hear his case after he asked the member numerous times to recuse herself from the case. He submits that he applied for EI regular benefits and the Commission paid him less than he should have received. Furthermore, EI changed the law to suit themselves during COVID which he believes is not lawful to do.

[7] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issue**

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## **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 that:

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.

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

[12] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

**Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

**ERB overpayment**

[13] The Claimant submits that he applied for EI benefits. He feels that it is unfair to have received ERB rather than EI benefits because he would have received more benefits. Furthermore, EI changed the law to suit themselves during COVID which he believes is not lawful to do.

[14] Before the General Division, the Claimant did not dispute that he received 10 weeks of ERB payments (\$5,000) and an advance ERB payment (\$ 2,000).

[15] The Claimant established a claim for benefits effective March 29, 2020.

[16] As stated by the General Division, the law states that for the period beginning on March 15, 2020, to September 26, 2020, no benefit period is to be established with respect to regular EI benefits. There is no option in the law for the Claimant to decline ERB and get regular EI benefits instead, or to opt-out of the ERB.<sup>1</sup> This means he had to be paid the ERB at \$500.00 per week.<sup>2</sup>

[17] As determined by the General Division, this means the Claimant is only eligible for 10 weeks of ERB (between March 29, 2020, and June 6, 2020) and he was paid for those 10 weeks before his return to work on June 7, 2020. The \$2,000 ERB advance represents 4 weeks of ERB above and beyond the 10 weeks the Claimant is eligible for.

[18] The law says the Claimant must repay any weeks of ERB he got that he is not eligible.<sup>3</sup>

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<sup>1</sup> Section 153.8(5) of the *Employment Insurance Act* says that no benefit period is to be established for any benefits referred to in paragraph 153.5(3)(a) of the *Employment Insurance Act*, and paragraph 153.5(3)(a) includes EI regular benefits

<sup>2</sup> See section 153.10(1) of the *Employment Insurance Act*.

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

[19] I must reiterate that the emergency response legislation does not allow discrepancy and does not give the Tribunal discretion in its application.<sup>4</sup>

[20] I understand that the Claimant feels that it is unfair to have received ERB rather than EI benefits. The fact remains that neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

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

### **Refusal to recuse**

[22] The Claimant submits that it was unacceptable for the General Division member to hear his case after he asked the member numerous times to recuse herself from the case.

[23] The Claimant filed an appeal to the General Division on October 24, 2022.<sup>5</sup> An initial in person hearing was scheduled for January 25, 2023.<sup>6</sup> The Claimant requested that his hearing be delayed 9 to 12 months to prepare his defense against the Commission's unfounded claim.<sup>7</sup>

[24] The General Division decided to hold a case conference with the Claimant to discuss several points, including a prospective hearing date and time.<sup>8</sup>

[25] During the case conference, the member reiterated her obligation to proceed with the appeal as quickly and fairly as fairness allows.<sup>9</sup> She asked the Claimant questions to inquire about the status of his preparation for the upcoming hearing. She decided to grant an adjournment and set another case conference on January 25, 2023, to follow-up on the Claimant's progress.

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<sup>4</sup> *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

<sup>5</sup> See GD2-2.

<sup>6</sup> See GD1-1.

<sup>7</sup> See GD6-1.

<sup>8</sup> See GD5-1 and GD5-2.

<sup>9</sup> See Section 8(1) of the *Social Security Tribunal Rules of Procedure*.

[26] Following the case conference, the Claimant requested that the General Division member recuse herself from hearing the case.<sup>10</sup> He submitted that during the case conference, the member was rude and confrontational and would not let him present his case. He further stated that the member bullied and condescended him throughout the case conference.

[27] On January 5, 2023, the General Division member rendered a written decision refusing the Claimant's request that she recuse herself.

[28] In view of the Claimant's ground of appeal, I proceeded to listen to the entire recording of the case conference held on December 21, 2022.

[29] I found no evidence that the General Division member was rude and confrontational towards the Claimant and that she did not allow him to present his case. I found no evidence that the member bullied and condescended the Claimant throughout the case conference.

[30] I noted that the member was patient and respectful towards the Claimant and explained the reasons why she scheduled a case conference. She informed the Claimant of her duty to act fairly for both parties and inquired on the progress of his preparation before setting a new hearing date. She determined that the case did not require a delay of 9 to 12 months to prepare and invited the Claimant to another case conference to monitor his progress before scheduling an official date of hearing. Following the Claimant's request, she calmly informed him of the procedure to follow if he wanted to present a request for recusal.

[31] The fact that at one point the member was of the view that there was a discrepancy in the Claimant's reasons for requesting such an important delay does not constitute bias or an appearance of bias. The Claimant was given an opportunity to clarify his comments.

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<sup>10</sup> See GD10-1, GD10-2, GD11-1.

[32] It appears from the recording that the Claimant strongly disagreed with the General Division member's decision not to allow an adjournment of 9 to 12 months for him to prepare his case. This does not, in and of itself, constitute grounds for disqualification.

[33] I understand that the Claimant is dissatisfied with the Commission's decision to recover overpayments from claimants who he submits correctly filed their claims for EI benefits. However, the Claimant benefited of a delay of four months (November to February) to prepare his case before the hearing held on March 8, 2023. This delay is more than adequate and reasonable considering the degree of difficulty of his case.

[34] I must reiterate that an allegation of bias is a serious allegation. It challenges the integrity of the Tribunal and of its members. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions of a claimant.

[35] I see no reviewable error in the General Division's conclusion that the Claimant did not demonstrate that the member's words or actions would lead a reasonable person, informed of the circumstances in this appeal, to agree that she would consciously or unconsciously not decide fairly the issue before her.

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

## **Conclusion**

[37] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

[38] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division