



[TRANSLATION]

Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 1129

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

# **Leave to Appeal Decision**

**Applicant:** S. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
May 5, 2023(GE-22-3641)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** August 18, 2023

**File number:** AD-23-571

## Decision

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

## Overview

[2] From April 26 to October 25, 2021, the Applicant (Claimant) worked as an agent and stopped working for her employer because of an illness or injury. On November 3, 2021, she made a renewal claim for Employment Insurance (EI) benefits (sickness benefits – special benefits). Her claim for benefits was renewed on October 24, 2021.

[3] The Respondent (Commission) then deducted the money the Claimant received from wage-loss insurance from her EI benefits. On June 25, 2022, a notice of debt was sent to the Claimant.

[4] The Claimant asked the Commission to reconsider this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division decided that the \$1,268 paid to the Claimant in wage-loss insurance is earnings. Those earnings have to be allocated or deducted from the Claimant's benefits. It found that the Commission correctly allocated those earnings to the weeks from November 7 to November 20, 2021. The General Division found that the Claimant had to pay back the overpayment.

[6] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. She says that the Commission misinformed her twice. She argues that she quickly and properly informed the Commission of her wage-loss insurance and that the Commission should be held responsible for its error, or else there is no point in consulting its agents. She considers that she does not have to repay the amount requested.

[7] 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

[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 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 on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case but must establish that her 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.

[11] I will grant 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?**

[12] The Claimant says that the Commission misinformed her twice. She argues that she quickly and properly informed the Commission of her wage-loss insurance and that the Commission should be held responsible for its error, or else there is no point in

consulting its agents. She considers that she does not have to repay the amount requested.

[13] The evidence on file indicates that the Claimant received a total of \$1,268 from her employer as wage-loss indemnity payments for the two weeks starting November 7 and 14, 2021, which is \$634.00 per week. The employer is registered for the Premium Reduction Program and has a premium reduction rate of 100%.

[14] The General Division correctly found that the wage-loss indemnity payments the Claimant received were earnings and should be allocated to the appropriate weeks in the benefit period.<sup>1</sup>

[15] Unfortunately for the Claimant, the case law of the Federal Court of Appeal has clearly established that an amount received without being entitled to it, even if the Commission made a mistake, does not make someone entitled to it and does not excuse a claimant from paying back that amount.<sup>2</sup>

[16] The Commission has 36 months to reconsider any claim for benefits paid or payable to a claimant. The Claimant made a renewal claim for EI sickness benefits effective October 24, 2021. A notice of debt was sent to the Claimant on June 25, 2022. The Commission reconsidered the Claimant's claim within the time limit set out in the law.<sup>3</sup>

[17] As the General Division noted, the Tribunal does not have jurisdiction to decide on writing off an overpayment. That authority rests exclusively with the Commission.<sup>4</sup> A write-off request must be made directly to the Commission.<sup>5</sup>

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<sup>1</sup> See sections 35(2) and 36(12) of the *Employment Insurance Regulations*.

<sup>2</sup> *Lazuno v Canada (Attorney General)*, 2005 FCA 324; and *Canada (Attorney General) v Shaw*, 2002 FCA 325.

<sup>3</sup> See section 52 of the *Employment Insurance Act* (Act).

<sup>4</sup> See section 56 of the Act.

<sup>5</sup> Only the Federal Court can hear an appeal of a write-off request that the Commission denied.

[18] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division