



Citation: *JM v Canada Employment Insurance Commission*, 2023 SST 1098

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 19, 2023
(GE-22-4130)

Tribunal member: Stephen Bergen

Decision date: August 15, 2023

File number: AD-23-649

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] J. M. is the Applicant. She made a claim for Employment Insurance (EI) benefits so I will call her the Claimant. The Claimant collected Employment Insurance Emergency Response Benefits for a time before her benefits were converted to regular EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), paid her 55 weeks of regular EI benefits.

[3] The Commission later decided that it had overpaid the Claimant. It asked her to repay her final five weeks of benefits. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] She appealed to the General Division of the Social Security Tribunal where her appeal was dismissed. She is now seeking leave to appeal to the Appeal Division.

[5] I am refusing leave to appeal. The Claimant has not shown how the General Division made an important error of fact.

Issues

[6] Is there an arguable case that the General Division made an important error of fact when it found that the Commission had overpaid the Claimant?

[7] Is there an arguable case that the General Division made an important error of fact in determining the amount of the overpayment?

I am not giving the Claimant permission to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[9] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[10] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Important error of fact

– Was the Claimant overpaid?

[11] The Claimant argued that the General Division made an important error of fact. An important error of fact occurs when the General Division bases its decision on a finding of fact that ignores or misunderstands the evidence or does not follow rationally from the evidence.³

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ The definition is found in section 58(1)(c) of the DESDA. It says that the General Division makes an error if it "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the evidence before it."

[12] There is no arguable case that the General Division made an important error of fact.

[13] The General Division stated that the Claimant received 55 weeks of benefits, from the week of October 4, 2020, through to October 23, 2021. The Claimant did not dispute this.

[14] The General Division noted that the *Employment Insurance Act* (EI Act) permits a claimant to receive a maximum of 50 weeks of regular benefits within their benefit period.⁴ From this, it concluded that it had overpaid the Claimant by the amount of the last five weeks of benefits.

[15] The Claimant has not pointed to any evidence that the General Division ignored or misunderstood. Nor has she shown that the available evidence could not have led the General Division to conclude that the Commission overpaid the Claimant for the last five weeks.

[16] However, the Claimant maintains that she should have to repay the benefits. She does not agree that she should have to repay benefits that the Commission paid her because of its own mistake.

[17] The Claimant is correct that the Commission made calculation errors and that it took some time for it to correct those errors and settle on the amount of the required repayment. However, the General Division understood this. Its decision discussed the circumstances of the overpayment extensively, and the Claimant has not found fault with that discussion.⁵

[18] Regardless, the General Division decision does not depend on any finding that relied on the Commission's mistake or delay. It does not matter that the Commission was at fault for the overpayment or that it may have managed the overpayment better. None of this changes the fact that the Commission overpaid five weeks of benefits.

⁴ See Section 12 (2.1) of the EI Act.

⁵ See the General Division decision, paras 15-31.

[19] Unfortunately for the Claimant, the EI Act permits the Commission to reconsider its own decisions within three years for any reason.⁶ The EI Act does not relieve a claimant from any of its various requirements when the Commission makes a processing mistake or gives a claimant bad or delayed information. If the Claimant was overpaid, she is liable to repay the overpayment.⁷

– **How much was the overpayment?**

[20] The Claimant also disagreed with the amount of the overpayment. She claims that she was only paid \$616.00 on September 29, 2021, and only paid \$596.00 on October 13, 2021. These two figures total \$1,212.00, which is less than the \$1,735.00 overpayment.

[21] However, there is no arguable case that the General Division made an important error of fact in finding the Claimant to have been overpaid \$1,735.00.

[22] The Commission calculated the overpayment from the last five weeks of benefit payments. The actual payments made to the Claimant are in the Commission file.⁸ The last five weeks total \$1,667.00, **net**. However, the Commission recovers gross overpayments, a practice which has been confirmed by the Appeal Division.⁹ The General Division set out the Commission's calculation of the **gross** amount (before deduction of income taxes), which is \$1,735.00.¹⁰ This is the amount the Commission expects to recover.

[23] I expect that the payment the Claimant says she received on September 29, 2021, is the payment processed September 27, 2021. The combined net amount of the payment for those two weeks was \$616.00, which is consistent with the Claimant's information. That payment was for the weeks of September 12-18 and

⁶ See section 52(1) of the EI Act.

⁷ See section 44 of the EI Act.

⁸ See GD3-29.

⁹ See *S. C. v. Canada Employment Insurance Commission*, 2019 SST 68

¹⁰ See para 47 of the General Division decision.

September 19-25, but the Commission is not asking for the return of benefits for the week of September 12-18.

[24] The \$596.00 payment the Claimant says she received on October 13, 2021, was likely the net payment the Commission processed on October 8, 2021.¹¹ This was for the weeks of September 26-October 2, and October 3-9.

[25] The Claimant's calculations do not mention the final \$753.00 net payment that the Commission processed on October 25, 2021, for the weeks of October 10-18, and October 7-23.

[26] It is possible that the Claimant's calculations capture a week that the Commission is not trying to recover, and that they did not include the payment for the last two weeks of benefits she received. It is also possible that the Claimant is thinking that the Commission should only be seeking recovery of the **net amount** paid to her.

[27] The General Division confirmed that the amount of the overpayment was \$1,735.00. The Claimant has not identified any evidence that the General Division ignored or misunderstood that might have led it to some other result.

[28] The Claimant's appeal has no reasonable chance of success.

Conclusion

[29] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

¹¹ See GD3-29.