



Citation: *BS v Canada Employment Insurance Commission*, 2023 SST 1211

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

# **Leave to Appeal Decision**

**Applicant:** B.S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 23, 2023  
(GE-23-596)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** September 6, 2023

**File number:** AD-23-642

## Decision

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

## Overview

[2] The Applicant (Claimant) applied for regular Employment Insurance (EI) benefits. The Commission set up his claim for regular EI benefits starting March 8, 2020.

[3] The Respondent (Commission) reviewed the Claimant's answers on his reports to determine whether he had worked and had earnings. It decided that the Claimant had worked during the time he was receiving EI benefits. It also decided the Claimant knowingly provided false or misleading information when he answered he didn't work and didn't have any earnings.

[4] As a result, the Commission allocated the earnings to the weeks he worked. It also imposed a monetary penalty for false or misleading information. After reconsideration, the Claimant appealed to the General Division.

[5] The General Division found that the Claimant had earnings and that they were properly allocated by the Commission to the weeks work was performed. It found that the Commission has proven the Claimant knowingly provided false or misleading information on his biweekly claims and that it could impose a penalty. The General Division found that the Commission acted judicially when it imposed the monetary penalty.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division ignored his evidence and made errors in law. He is requesting that his debt be waived.

[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?**

### Allocation of earnings

[13] The Claimant submits that his evidence shows that he did not "double dip " by collecting EI benefits while he was working. He submits that all his bank statements show that he did not collect EI benefits while he was working. He is willing to authorize the Commission to investigate further to determine if he has any other bank account. The Claimant submits that he is a loyal taxpayer and would like the debt to be waived.

[14] The onus of proof to dispute payroll information is on the claimant, and mere allegations are insufficient.<sup>1</sup>

[15] The evidence presented by the Commission to the General Division consists of several *Records of Employment (ROE's)*, which confirm the amounts payable to the Claimant for each week in question.<sup>2</sup>

Week beginning:	Earnings:	Instead of:
April 12, 2020	\$1,961.00	\$0.00
May 3, 2020	\$784.00	\$0.00
June 28, 2020	\$1,816.00	\$0.00
July 5, 2020	\$2,270.00	\$0.00
July 12, 2020	\$908.00	\$0.00
January 3, 2021	\$2,579.00	\$0.00
January 24, 2021	\$868.00	\$0.00
January 31, 2021	\$1,370.00	\$868.00
February 7, 2021	\$0.00	\$868.00

[16] In support of his appeal to the General Division, the Claimant produced a collection summary that he prepared that indicates the dates he collected EI benefits and whether he received employment earnings during those dates.<sup>3</sup> He had previously submitted to the Commission bank statements to show that he did not receive employment earnings in his CIBC account during the relevant dates.<sup>4</sup>

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<sup>1</sup> *Dery v Canada (Attorney General)*, 2008 FCA 291.

<sup>2</sup> See GD3-15 to GD3-24.

<sup>3</sup> See GD2.

<sup>4</sup> See GD3-53 to GD3-61.

[17] However, nothing in the Claimant's evidence contradicts the evidence from the employers that he worked for the weeks relevant to this case. No documents from the employers were submitted to attest that he did not work those weeks or that the employers made mistakes in the ROE's. The documents filed by the Claimant only prove that no earnings were deposited in his CIBC bank account. They do not prove that he did not work for the employers those weeks.

[18] As stated by the General Division, earnings are to be reported in the week that the work was performed, not the week in which the earnings are given to the Claimant or deposited into his bank account.

[19] As stated previously, it is insufficient for a claimant to simply question the employer's information to meet their burden of proof.

[20] The Claimant invites the Commission to investigate further but it was up to him to present to the General Division the evidence that challenged the evidence presented by his employers. He did not present such evidence. He did not meet his burden of proof.

[21] For these reasons, I see no reviewable error made by the General Division when it concluded that the sums received were earnings that needed to be allocated to the weeks the work was performed regardless of when the work was paid.

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

### **Penalty**

[23] The General Division had to decide whether the Claimant knowingly provided false or misleading information on his claim reports and if so, whether the Commission properly decided to impose a monetary penalty.

[24] The only requirement of Parliament for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading statement. Therefore, the absence of the intent to defraud is of no relevance.

[25] The record shows that the Claimant responded “no” to the following question:

“Did you work or receive any earnings during the period of this report? This includes work for which you will be paid later, unpaid work or self-employment.”

[26] Before the General Division, the Claimant did not speak to the dates he worked. Instead, he put forward that he wasn't in receipt of earnings while in receipt of EI benefits. However, the evidence submitted by the employers clearly shows that the Claimant did work during the relevant weeks. Therefore, the General Division did not believe the Claimant's explanation. It found that the evidence showed that the Claimant knowingly provided false or misleading information to the Commission on his biweekly claims.

[27] I see no reviewable error made by the General Division. It applied the correct legal test to the facts the Claimant raised, and it considered whether, having regard to all the circumstances, the Claimant had knowingly made false or misleading statements. It also stated the proper test to decide whether the Commission had exercised its discretion properly by imposing a monetary penalty.

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

### **Waiving of debt**

[29] The Claimant wants the Tribunal to waive his debt. This Tribunal does not have authority to waive a claimant's debt. Only the Commission has the exclusive power to write-off an amount owing.<sup>5</sup>

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<sup>5</sup> See section 56 of the *Employment Insurance regulations*.

## **Conclusion**

[30] 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 find that the appeal has no reasonable chance of success.

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

Pierre Lafontaine  
Member, Appeal Division