



Citation: *PR v Canada Employment Insurance Commission*, 2023 SST 1251

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 11, 2023
(GE-22-4137)

Tribunal member: Solange Losier

Decision date: September 12, 2023

File number: AD-23-551

Decision

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

Overview

[2] P. R. is the Claimant in this case. She stopped working due to a shortage of work and applied for the Employment Insurance Emergency Response Benefit (EI-ERB). She returned to work after 15 weeks but received the equivalent of 17 weeks of EI-ERB benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was overpaid EI-ERB benefits.¹ They decided that she was only entitled to 15 weeks of EI-ERB. This resulted in an overpayment of \$1,000.00 for the additional 2 weeks of EI-ERB that she received.²

[4] The General Division agreed and said that the Claimant was only entitled to get 15 weeks of EI-ERB.³ It said that she was liable to repay the overpayment owing. It also decided that it could not write off the overpayment.

[5] The Claimant is now appealing the General Division decision to the Appeal Division.⁴ This appeal has no reasonable chance of success, so I cannot give the Claimant permission to appeal the General Division decision.

Preliminary matters

[6] The Claimant's application to the Appeal Division identified that the General Division made an "error of fact".⁵ She did not provide any reasons or point to any particular facts that the General Division got wrong.

¹ See reconsideration decision at page GD3-90.

² See notice of debt issued on May 21, 2022 at page GD3-76.

³ See General Division decision at pages AD1A-1 to AD1A-7.

⁴ See application to Appeal Division at pages AD1-1 to AD1-8 and AD1B-1 to AD1B-7.

⁵ See application to Appeal Division at pages AD1B-5.

[7] The Tribunal emailed the Claimant a letter asking for additional information, specifically asking her to provide reasons for appealing.⁶ The deadline to reply was June 30, 2023. The Claimant didn't respond by the deadline set out.

[8] At a later date, the Claimant called the Tribunal and spoke to an agent. She said that she didn't get the previous letter and asked for an extension to reply.

[9] Following up on her request, the Tribunal emailed a letter granting her an extension to reply by August 23, 2023.⁷ It asked her to explain in detail *why* she was appealing the General Division decision.

[10] The Claimant replied to the Tribunal's letter and said that the General Division made an "error in jurisdiction".⁸ She did not provide any reasons or explain how the General Division made an error.

Issue

[11] Is there an arguable case that the General Division made an error of fact or error of jurisdiction?

Analysis

[12] An appeal can proceed only if the Appeal Division gives permission to appeal.⁹

[13] I must be satisfied that the appeal has a reasonable chance of success.¹⁰ This means that there must be some arguable ground upon which the appeal might succeed.¹¹

⁶ See SST letter dated June 20, 2023.

⁷ See SST letter dated August 9, 2023.

⁸ See Claimant's response at page AD1C-1.

⁹ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

¹⁰ See section 58(2) of the DESD Act.

¹¹ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

[14] The possible grounds of appeal to the Appeal Division are that the General Division:¹²

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[15] An error of fact happens when the General Division has “based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it”.¹³

[16] This means that I can intervene if the General Division based its decision on an important mistake about the facts of the case. This involves considering some of the following questions:¹⁴

- Does the evidence squarely contradict one of the General Division’s key findings?
- Is there no evidence that could rationally support one of the General Division’s key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

[17] Not all errors of fact will allow me to intervene. An error of fact needs to be important enough that the General Division relied on it to make a finding that impacted the outcome of the decision.

[18] An error of jurisdiction means that the General Division didn’t decide an issue it had to decide or decided an issue it did not have the authority to decide.¹⁵

¹² See section 58(1) of the DESD Act.

¹³ See section 58(1)(c) of the DESD Act.

¹⁴ This is a summary of the Federal Court of Appeal’s decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

¹⁵ See section 58(1)(a) of the DESD Act.

I am not giving the Claimant permission to appeal

- **There is no arguable case that the General Division made an error of fact or an error of jurisdiction**

[19] The Claimant identified that the General Division made an error of fact and/or an error of jurisdiction.¹⁶ However, she did not provide any other details or arguments about the alleged errors. Even so, I've reviewed the entire file to make sure that the General Division didn't make any errors.

[20] First, the General Division had to decide how many weeks of EI-ERB the Claimant was entitled to receive. Then, it had to decide how many weeks of EI-ERB she actually received.

[21] The General Division said that the Claimant has established an EI-ERB claim effective March 15, 2020.¹⁷ The EI-ERB was payable at \$500.00 per week.¹⁸

[22] The General Division decided that the Claimant was only entitled to receive 15 weeks of EI-ERB, totalling \$7,500.00. However, it said that she received the equivalent of 17 weeks of EI-ERB, totalling \$8,500.00.¹⁹

[23] The General Division said that the Claimant returned to work after 15 weeks, so she stopped being entitled to EI-ERB benefits.²⁰ The Claimant agreed that she returned to work after 15 weeks, so she was no longer entitled EI-ERB benefits.²¹

[24] Given that, the General Division said that she was overpaid by \$1,000.00, which represents 2 additional weeks of EI-ERB payments she was not entitled to receive.²²

¹⁶ See pages AD1-3; AD1B-5 and AD1C-1.

¹⁷ See paragraph 6 of the General Division decision and sections 153.7(1) of the *Employment Insurance Act* (EI Act).

¹⁸ See paragraph 5 of the General Division decision.

¹⁹ See paragraphs 7, 8, 9, 12 and 19 of the General Division decision. This included an advance lump sum payment of \$2,000.00, which represents 4 weeks of EI-ERB.

²⁰ See paragraphs 10 and 22 of the General Division decision.

²¹ See paragraph 25 of the General Division decision.

²² See paragraph 26 of the General Division decision.

[25] It is not arguable that the General Division made an error of fact with this case. None of the facts appear to be in dispute. Its findings were consistent with the facts and evidence. In particular, the Claimant agreed that she returned to work after 15 weeks, but that she collected the equivalent of 17 weeks of EI-ERB benefits.²³ This means that she was overpaid EI-ERB benefits by 2 weeks.²⁴ According to the notice of debt, the Claimant owes \$1,000.00.²⁵

[26] The General Division acknowledged the Claimant's hardship argument but said that the Tribunal does not have the power to write off the overpayment debt because only the Commission can make that decision.²⁶ It said that she was still liable to repay the overpayment debt.²⁷

[27] The Federal Court has also confirmed that writing off an overpayment debt is solely within the jurisdiction of the Commission.²⁸

[28] Even so, the General Division outlined the options available to the Claimant.²⁹ It said that she could ask the Commission to forgive all or part of the overpayment debt due to financial hardship or discuss repayment options with the Canada Revenue Agency.

[29] In response to the Claimant's argument that she paid the overpayment, the General Division acknowledged that she had made a payment towards it.³⁰ This is also consistent with what the Commission wrote in their arguments.³¹

²³ See paragraph 25 of the General Division decision.

²⁴ See pages GD3-21; GD3-22 to GD3-23 and GD3-24 to GD3-71.

²⁵ See page GD3-76.

²⁶ See paragraph 38 of the General Division decision and sections 44 and 112.1 of the EI Act.

²⁷ See paragraphs 36 and 37 of the General Division decision.

²⁸ See *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at paragraph 16.

²⁹ See paragraphs 39, 40 and 41 of the General Division decision.

³⁰ See paragraphs 30, 31 and 32 of the General Division decision.

³¹ See page GD4-5. The Commission acknowledges that the Claimant made a \$100.00 payment towards her overpayment.

[30] It is not arguable that the General Division made an error of jurisdiction. It properly identified its jurisdiction when it said that it could not write off the overpayment debt.³² It only dealt with things that it had the power to.

– **There are no other reasons for giving the Claimant permission to appeal**

[31] I reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.³³ The General Division did not misinterpret or fail to properly consider any relevant evidence.

Conclusion

[32] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

³² See paragraphs 38 and 39 of the General Division decision.

³³ The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.