



Citation: *JO v Canada Employment Insurance Commission*, 2023 SST 1409

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 29, 2023
(GE-22-3773)

Tribunal member: Melanie Petrunia

Decision date: October 26, 2023

File number: AD-23-683

Decision

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

Overview

[2] The Applicant, J. O. (Claimant) applied for employment insurance (EI) benefits on March 30, 2020. Because of amendments to the *Employment Insurance Act* (EI Act), the Claimant received the Emergency Relief Benefit (ERB).

[3] The Respondent, the Canada Employment Insurance Commission (Commission) paid the Claimant an initial advance of \$2,000 of ERB, equivalent to four weeks of benefits. The Commission intended to withhold four weeks of benefits later in his benefit period to recover the advance.

[4] The Claimant also received ten weeks of ERB from March 22, 2020, to May 29, 2020. He did not collect the ERB for long enough for the advance to be recovered which the Commission said resulted in an overpayment of \$2,000.

[5] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. It decided that the Claimant had to repay the \$2,000 advance because he received four weeks of ERB payments to which he was not entitled.

[6] The Claimant now wants to appeal the General Division decision to the Appeal Division. However, he needs permission for his appeal to move forward. He argues that the General Division made an important error of fact and did not follow procedural fairness.

[7] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no 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?

I am not giving the Claimant permission to appeal

[9] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[10] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).²

[11] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;³ or
- d) made an error in law.⁴

[12] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

² DESD Act, s 58(2).

³ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁴ This paraphrases the grounds of appeal.

argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

There is no arguable case that the General Division erred

[13] The General Division had to decide if the Claimant was entitled to the \$2,000 advance ERB payment he received.

[14] In its decision, the General Division explained the changes to the EI Act that were made in response to the COVID-19 pandemic.⁶ Because of these changes, when the Claimant applied for EI benefits, he received ERB.⁷

[15] The General Division reviewed the evidence, including an attestation certificate in the file which showed the amounts of ERB that the Claimant was paid. It found that he was paid an advance of \$2,000, representing four weeks of ERB. He was also paid ten additional weeks of ERB.⁸

[16] The General Division found that the Claimant was entitled to ten of the fourteen weeks of ERB that he received. This meant that the Claimant was paid four weeks of ERB that he was not entitled to receive.⁹

[17] The General Division considered the Claimant's argument that he was told by a Service Canada agent that the first payment of \$2,000 was to cover the waiting period. It also acknowledged that the Claimant said he knew other people who received the advance but did not have to repay the money.¹⁰ The General Division found that it had to apply the law as written. The Claimant was not entitled to \$2,000 of ERB that he received.¹¹

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁶ General Division decision at paras 8 and 9.

⁷ General Division decision at para 10.

⁸ General Division decision at para 12.

⁹ General Division decision at para 17.

¹⁰ General Division decision at para 18.

¹¹ General Division decision at para 20.

[18] In his application for leave to appeal, the Claimant argues that the General Division did not follow procedural fairness. He says that the Appeal Division made a decision at a previous hearing that he had to repay \$2,500 on another claim. If he has to repay an additional \$2,000 it will cause financial hardship.¹²

[19] The Claimant says that the General Division and the Appeal Division, in his previous matter, relied too much on the law and did not consider fairness. He says the General Division was unfair because it made a decision based on the law, rather than logic.¹³

[20] There is no arguable case that the General Division erred. It stated in its decision, that it cannot make a decision that is contrary to the law, even when the application of the law seems unfair. The General Division cited a decision of the Federal Court which makes it clear that the Tribunal must follow the law.¹⁴

[21] I understand that the Claimant finds the overpayment unfair. The previous matter that he referred to is unrelated and is not relevant to the issue of his liability for an overpayment in this matter. There is no arguable case that the General Division did not follow procedural fairness when it found that the Claimant was overpaid ERB.

[22] The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. The General Division properly cited and applied the law.

[23] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any errors of law, and I see no evidence of any legal errors. There is no arguable case that the General Division made an error of jurisdiction.

¹² AD1-4

¹³ AD1-4

¹⁴ See General Division decision at para 20 citing *Canada (Attorney General) v. Knee*, 2011 FCA 301.

[24] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

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

Melanie Petrunia
Member, Appeal Division