



[TRANSLATION]

Citation: *DL v Canada Employment Insurance Commission*, 2024 SST 195

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	D. L.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated December 21, 2023 (GE-23-3125)
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Tribunal member:	Pierre Lafontaine
Decision date:	February 29, 2024
File number:	AD-24-42

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance benefits on March 23, 2020. A benefit period for the Employment Insurance Emergency Response Benefit (EI ERB) was established. On April 6, 2020, the Respondent (Commission) made an advance payment of \$2,000 to the Claimant.

[3] The Commission is now asking the Claimant to pay back the \$2,000. The Commission says that the Claimant received eight weeks of the EI ERB while he was unemployed for four weeks. This means that he has to pay back the \$2,000 benefit overpayment.

[4] The General Division found that the Claimant received four weeks of the EI ERB at the rate of \$500 for a total of \$2,000 for the period from March 22, 2020, to April 18, 2020. It found that the Claimant received a total of \$4,000. This resulted in a \$2,000 overpayment. The General Division found that he had to pay back the \$2,000 to the Commission.

[5] The Claimant is asking the Appeal Division for permission to appeal the General Division decision. He argues that he should not be penalized for promptly returning to work. He says that he is not responsible for the overlapping of two regimes and that the Commission must take responsibility for its poor management.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[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 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 at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will give 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 argues that he should not be penalized for promptly returning to work. He says that he is not responsible for the overlapping of two regimes and that the Commission must take responsibility for its poor management.

[13] The General Division found that the Claimant received four weeks of the EI ERB at the rate of \$500 for a total of \$2,000 for the period from March 22, 2020, to April 18, 2020. It found that the Claimant received a total of \$4,000. This resulted in a \$2,000 overpayment. The General Division found that he had to pay back the \$2,000 to the Commission.

[14] I note that the legislation in force during the pandemic allowed the Commission to reconsider whether a person received an amount of EI ERB that they were not eligible for. The law is clear that the Claimant has to pay back the overpayment.¹

[15] In addition, Federal Court of Appeal case law clearly states that an amount received by a claimant without entitlement, even after a Commission error, does not excuse the claimant from having to repay it.²

[16] So, the General Division made no reviewable error when it found that the Claimant had to pay back the EI ERB overpayment.

[17] Unfortunately, the law does not allow for any discrepancies and does not give any discretion to the Tribunal to write off the overpayment. As the General Division noted, the law gives the Commission exclusive jurisdiction to decide whether to forgive a debt owed to it under the law.³

[18] For the above reasons, and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for permission to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

¹ See sections 44, 52, and 153.6(1)(a) of the *Employment Insurance Act*.

² *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

³ See section 56 of the *Employment Insurance Regulations*.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division