



Citation: *ZK v Canada Employment Insurance Commission*, 2023 SST 1811

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Z. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 26, 2023
(GE-23-2144)

Tribunal member: Stephen Bergen

Decision date: December 18, 2023

File number: AD-23-980

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

Overview

[2] Z. K. is the Applicant. I will call him the Claimant because he claimed Employment Insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), paid the Claimant benefits under the Employment Insurance Emergency Response Benefits program (EI-ERB). Under this program, claimants were entitled to a \$500.00 weekly benefit if they met the requirements. To get support to claimants quickly, the law authorized the Commission to immediately prepay benefits.¹ The Commission advanced claimants \$2000.00 of the EI-ERB benefits to which they would be eligible in later weeks. The Commission expected to recover the advance by withholding payment of the EI-ERB benefit in some of those weeks.

[4] The Claimant received this \$2000.00 advance. However, he returned to work and stopped claiming the EI-ERB benefit before the Commission had a chance to recover the advance. As a result, the Commission sent the Claimant a Notice of Debt to recover it.

[5] When the Claimant filed his request for reconsideration, he disagreed that he should have to repay the \$2000.00 advance. He argued that he applied for regular EI benefits after his employer laid him off, but the Commission paid him the “CERB benefit” instead.

[6] The Commission did not change its decision, so the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal. He is now seeking leave to appeal to the Appeal Division.

¹ See 153.7(1.1) of the EI Act.

[7] I am refusing leave to appeal because the Claimant has no reasonable chance of success in his appeal. He has not made out an arguable case that the General Division made an error of jurisdiction, or that it made any other error that I can consider.

Issue

[8] The issue in this appeal is:

- a) Is there an arguable case that the General Division failed to exercise its jurisdiction by not considering that the Claimant did not apply for the EI-ERB benefit?

I am not giving the Claimant leave to appeal

General Principles

[9] For the Claimant's application for leave to appeal to succeed, his 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.

[10] 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.²

[11] 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."³

² 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).

³ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Error of jurisdiction

[12] The Claimant believes the General Division made an error of jurisdiction. He explains that he applied for EI benefits but received “CERB” (which was actually the EI-ERB benefit). He did not elaborate further.

[13] I expect that the Claimant meant to argue that the General Division should have decided whether the Commission ought to have paid him regular EI benefits rather than the EI-ERB – and that it made an error of jurisdiction by failing to do so.

[14] There is no arguable case that the General Division made an error of jurisdiction.

[15] The General Division’s jurisdiction is limited to considering those issues set out in the Commission’s reconsideration decision.⁴ The Commission’s reconsideration decision is the decision dated June 26, 2023. The reconsideration decision identifies the issue as the “Employment Insurance Emergency Response Benefit Overpayment.” It says that the Commission is “maintaining” (not changing) its decision on this issue. The reconsideration decision dates the original decision as “June 27, 2022,” but this is clearly a clerical error. The Commission communicated its decision to seek recovery of the overpayment in the April 30, 2022, Notice of Debt. There was no other decision in the reconsideration file.⁵

[16] There is no reason to believe that the subject of the reconsideration decision was anything other than the repayment of the \$2000.00 advanced under the EI-ERB provisions. The Claimant’s Request for reconsideration references the “CERB” benefit repayment.” He also discussed the repayment issue with the Commission on June 22, 2023, and then again on June 26, 2023. In the second conversation, the Commission told him that it could not offset the overpayment against any other weeks. It told him that it was maintaining its original decision.

⁴ See section 113 of the EI Act.

⁵ The reconsideration file is the GD3 file.

Possible errors of fact

[17] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁶

[18] At the General Division, the Claimant argued that he applied for regular EI benefits, and he seems to believe that this invalidates the overpayment.

[19] The General Division did not ignore or misunderstand that the Claimant applied for regular EI. It found that he applied for regular EI benefits, and it acknowledged his argument.⁷ However, this fact was irrelevant to the decision that the General Division needed to make, which was limited by its jurisdiction. Furthermore, the General Division correctly stated that the Commission had no “legal power to pay [him] EI regular benefits,” and that the law required it to treat his application as an application for the EI ERB.⁸

[20] The record does not support an argument that the General Division made an important error of fact. The General Division considered that the Commission paid the Claimant a \$2000.00 advance, and also paid him eleven weeks of the (\$500.00) EI-ERB benefit for each week. It noted that the Commission had not been able to recover the EI-ERB advance. The Claimant did not dispute these facts.

[21] There is no arguable case that the General Division ignored or misunderstood any relevant evidence.

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁶ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

⁷ See the General Division decision at para 29, and para 27.

⁸ *Ibid*, para 27.