



[TRANSLATION]

Citation: *GA v Canada Employment Insurance Commission*, 2024 SST 236

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: G. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
January 23, 2024 (GE-23-2021)

Tribunal member: Pierre Lafontaine

Decision date: March 8, 2024

File number: AD-24-150

Decision

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

Overview

[2] On March 24, 2020, the Applicant (Claimant) applied for Employment Insurance (EI) benefits. A benefit period for the Employment Insurance Emergency Response Benefit (EI ERB) was established. On April 6, 2020, the Respondent (Commission) gave the Claimant an advance payment of \$2,000.

[3] The Commission is now asking the Claimant to pay back the \$2,000 advance payment. The Commission says that the Claimant was unemployed for 6 weeks but received 10 weeks of the EI ERB. So, he has to return the benefits he was overpaid, specifically the \$2,000 advance payment.

[4] The General Division found that the Claimant was eligible for six weeks of the EI ERB at \$500 per week for a total of \$3,000 for the period from March 25, 2020, to May 3, 2020. It found that he received a total of \$5,000, so he was overpaid \$2,000. 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 the General Division did not take the right dates into account and misinterpreted the notice of debt, which indicates a balance of \$0. He says that the General Division failed to consider that he has not asked for the excess amount and that this situation has hurt him because he paid more tax and lost the GST and QST.

[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; he must instead establish that the appeal has a reasonable chance of success. In other words, he has to 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 the General Division did not take the right dates into account and misinterpreted the notice of debt, which indicates a balance of \$0. He says that the General Division failed to consider that he has not asked for the excess amount

and that this situation has hurt him because he paid more tax and lost the GST and QST.

[13] On March 24, 2020, the Claimant applied for EI regular benefits. A claim was set up for the EI ERB.

[14] As the General Division noted, the government introduced temporary measures during the pandemic. Between March 15, 2020, and September 26, 2020, all applications for EI regular benefits were processed as applications for the EI ERB.¹ So, if someone applied for EI regular benefits and their benefit period started during that time, they would have received the EI ERB instead of EI regular benefits. The law did not let you choose benefits during that period.

[15] The General Division found that the Claimant was eligible for six weeks of the EI ERB at \$500 per week for a total of \$3,000 for the period from March 25, 2020, to May 3, 2020. It found that he received a total of \$5,000, so he was overpaid \$2,000. The General Division found that he had to pay back the \$2,000 to the Commission.

[16] Before the General Division, the Claimant acknowledged that he stopped working on March 24, 2020. The General Division considered that the Record of Employment from the employer and the Claimant's application for benefits confirm that his last day worked was March 24, 2020.²

[17] The General Division also considered the Claimant's May 10, 2020, statement that he had gone back to work on May 4, 2020.³

[18] The General Division noted that the Claimant had not provided the part of the statement of account that indicates that the debt was \$2,000.

¹ See sections 153.5(3)(a), 153.8(5), and 153.1310 of the *Employment Insurance Act*.

² See GD3-15 and GD3-12.

³ See GD8-23.

[19] 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 a person has to pay back any EI ERB they were overpaid.⁴

[20] In addition, Federal Court of Appeal case law clearly states that a claimant who receives an amount without being entitled to it, even as a result of a Commission error, is not excused from having to repay it.⁵

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

[22] The law does not allow for any discrepancies and does not give any discretion to the Tribunal to write off the amount to be repaid. As the General Division noted, the law gives the Commission exclusive jurisdiction to decide whether to write off a debt owed to it under the law.⁶

[23] Unfortunately for the Claimant, the Tribunal does not have the authority to order compensation for the harm he claims to have suffered. That is a matter for another forum.⁷

[24] 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.

⁴ See sections 44, 52, and 153.6(1)(a) of the *Employment Insurance Act*.

⁵ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

⁶ See section 56 of the *Employment Insurance Regulations*.

⁷ See *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; and *Canada (Attorney General) v Tjong*, A-672-95.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division