



Citation: *KB v Canada Employment Insurance Commission*, 2024 SST 210

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 17, 2024
(GE-23-3349)

Tribunal member: Stephen Bergen

Decision date: **March 4, 2024**

File number: AD-24-99

Decision

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

Overview

[2] K. B. is the Applicant. I will call him the Claimant because this application concerns his claim for the Employment Insurance Emergency Response Benefit (EI-ERB).

[3] The Respondent, the Canada Employment Insurance Commission (Commission), paid the Claimant benefits under the 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 the \$2000.00 advance on April 13, 2020, and also collected 11 weeks of the EI-ERB benefit. However, he stopped claiming the EI-ERB benefit before the Commission had a chance to recover any part of the advance. As a result, the Commission sent the Claimant a Notice of Debt to recover it.

[5] The Claimant asked the Commission to reconsider. He disagreed that he should have to repay the \$2000.00 advance.

[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.

[7] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made any of the errors that I may consider.

¹ See 153.7(1.1) of the *Employment Insurance Act* (EI Act).

Issues

[8] Is there an arguable case that the General Division made an error that I may consider?

I am not giving the Claimant permission 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

[12] When the Claimant originally applied to the Appeal Division, he did not identify any error in the General Division decision. The Appeal Division wrote to him on February 12, 2024, to explain the errors that it has the authority to consider, and to ask him to explain in detail why he is appealing.

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.

[13] In his February 20, 2024, response, the Claimant said that he is appealing because he believes that the Commission has waived repayment of the advance for others. He also notes that he did not have sufficient time to fight the matter (before CRA took steps to recover the advance), and because he needed the benefits.

[14] I cannot grant permission for the appeal to move forward unless the Claimant has shown me that there is an arguable case that the General Division made one of the errors described in the grounds of appeal. His reasons for appeal do not identify one of these errors.

No fairness error

[15] There is no arguable case that the General division acted unfairly.

[16] The only fairness error, I have authority to review is an error of procedural fairness. “Procedural fairness” is where the General Division does not give a party a fair opportunity to be heard or know the case against them, or where the General Division member’s conduct might reasonably be viewed as biased.

[17] The Claimant did not point to any error of this kind, and nothing in the record suggests an error of procedural fairness.

[18] I understand that the Claimant has paid into Employment Insurance for a long time and that he does not feel it is fair that the Commission should be able to recover the advance. However, I cannot interfere with the General Division decision just because the Claimant disagrees with the decision result.

No error of jurisdiction

[19] There is no arguable case that the General Division made an error of jurisdiction. The General Division’s jurisdiction is defined by the issues in the Commission’s reconsideration decision. It must consider all of the issues set out in the reconsideration decision, and it may not consider any other issues.⁴

⁴ See section 112 and 113 of the EI Act.

[20] The only issue before the General Division (the only issue on which it could decide) was whether the Commission had overpaid the Claimant by \$2000.00.

[21] The Claimant feels that the Canada Revenue Agency had no right to take the \$2000.00, “off of [his] tax return.” He says that this happened before he even received the Notice of Debt.⁵

[22] I acknowledge that this would have been upsetting. However, the General Division had no jurisdiction to consider the Canada Revenue Agency’s actions or to oversee the reasonableness of its collection efforts.

No error of law

[23] The General Division did not act unfairly towards the Claimant. The Claimant was paid \$2000.00 more what he was entitled to under the EI-ERB program. The law says that the overpayment is a debt to the Crown and that he must pay it back.⁶ The General Division had no discretion to ignore the law.

No important error of fact

[24] There is no arguable case that the General Division based its decision on an important error of fact.

[25] The Claimant did not dispute that the Commission paid him a \$2000.00 advance and that it did not get a chance to recover any part of the advance by withholding his EI-ERB benefits. That means that the Claimant had received \$2000.00 more than he was entitled to under the EI-ERB program.

[26] The Claimant believes that the Commission has waived the advance repayment requirement for other claimants.

[27] It is not clear what he means. However, it is true that the Commission may make allowances for claimants who failed to file claims for weeks of EI-ERB benefits that they

⁵ See GD3-37,38.

⁶ See sections 45 and 47 of the EI Act.

would have received if they had claimed them. At its discretion, the Commission may offset any additional benefits that a claimant could have claimed against their overpayment. In so doing, the Commission may reduce or eliminate the amount that is outstanding. None of this changes the fact that the advance overpayment is a debt to the Crown and that the claimant must repay it one way or another.

[28] It appears that the Commission reviewed the Claimant's circumstances to see if it could do something similar for him. It did not find other weeks of benefits that the Claimant could have claimed.

[29] But this was not the issue before the General Division. The General Division was considering only whether the Commission had overpaid the Claimant. What the Commission has done, or can do, to reduce the outstanding debt in other claims was not relevant. The General Division was not required to consider what the Commission chooses to do in the circumstances of other claims. Nor would it be appropriate.

[30] There is no arguable case that the General Division made an error of jurisdiction, law, or an important error of fact, by failing to consider what the General Division does in other claims.

[31] The Claimant's appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division