



Citation: *TK v Canada Employment Insurance Commission*, 2024 SST 95

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** T. K.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated August 24, 2023  
(GE-23-1670)

---

**Tribunal member:** Jude Samson

**Decision date:** January 29, 2024

**File number:** AD-23-878

## Decision

[1] I'm refusing the application for leave (permission) to appeal. The appeal will not proceed.

## Overview

[2] T. K. is the Claimant in this case. Her story is complex and has given rise to legitimate points of confusion and frustration. Ultimately, however, I have to respect the legal limits on the Appeal Division's role and powers.

[3] The Tribunal reviews decisions made by the Canada Employment Insurance Commission (Commission). In this case, the Commission decided that the Claimant was overpaid \$2,000 in benefits. That decision acts as a limit on the issues that the Tribunal can consider.<sup>1</sup>

[4] The Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division. The General Division held a hearing on August 22, 2023, and dismissed the Claimant's appeal two days later.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she needs permission for the file to move forward.

[6] I sympathize with the Claimant's circumstances. However, I've found that her appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

---

<sup>1</sup> The Claimant has a second case: AD-23-877. It raises different issues and that I am dealing with separately.

## Issues

[7] This decision focuses on the following issues:

- a) Is there an arguable case that the General Division failed to provide the Claimant with a fair process?
- b) Is there an arguable case that the General Division made an error of law or based its decision on an important mistake about the facts of the case when it found that the Claimant was overpaid \$2,000 in benefits?
- c) Are there other reasons for giving the Claimant permission to appeal?

## Analysis

[8] The legal test the Claimant needs to meet to get permission to appeal is low: Is there any arguable ground on which the appeal might succeed?<sup>2</sup> If the appeal has no reasonable chance of success, then I have to refuse permission to appeal.<sup>3</sup>

[9] To decide this question, I focused on whether the General Division could have made one of the errors that the law recognizes.<sup>4</sup>

## **There's no arguable case that the General Division's process was unfair to the Claimant**

[10] Generally speaking, the duty of fairness includes the Claimant's right to fully present her case and to have it decided by a fair and impartial decision maker.

[11] The Claimant had two appeals in front of the General Division at the same time. Both were assigned to the same member, and he held one hearing in both appeals.

---

<sup>2</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>3</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>4</sup> Section 58(1) of the DESD Act lists the relevant errors, formally known as "grounds of appeal."

[12] Frustrations ran high during the hearing. The Claimant understood that the General Division member would be able to deal with all her concerns. During the hearing; however, the General Division member said that some of the Claimant's concerns were beyond the scope of his jurisdiction (or powers).

[13] For example, the Claimant alleged that the Commission's \$2,000 notice of debt in this file was in retaliation for what had happened in her other file. She also argued that the Commission made a mistake on one of her tax slips (known as a T4E) and that the General Division should order that it be fixed.

[14] After about an hour, the General Division member ended the hearing somewhat abruptly, while the Claimant continued to insist that her concerns weren't being addressed.

[15] While I understand the Claimant's frustration and share some of her concerns about how the hearing unfolded, she hasn't raised an arguable case that the General Division member was biased or that she was denied the chance to fully present her case.

[16] Allegations of bias are serious, and Tribunal members are presumed to be impartial.<sup>5</sup> As a result, the legal test for proving bias is high. The Claimant needs evidence to prove bias; suspicion isn't enough.<sup>6</sup>

[17] I listened to the audio recording of the General Division hearing, but the Claimant's allegations don't meet the high bar needed to prove bias. An informed person viewing the matter realistically and practically would not conclude that the General Division member decided the case unfairly based on the way he conducted the hearing.

[18] The General Division member remained calm in the face of the Claimant's mounting frustration. He tried to take control of the hearing and to explain the limits of

---

<sup>5</sup> The Supreme Court of Canada discussed bias in the decision *Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2.

<sup>6</sup> See *SM v Minister of Employment and Social Development*, 2015 SSTAD 1050 at paragraph 17.

the Tribunal's powers. However, the Claimant kept pressing the General Division member to do more to answer her various concerns.

[19] After the hearing, the General Division member wrote a fairly detailed decision setting out some of the EI-ERB's key features, addressing certain points of confusion, summarizing the Claimant's arguments, and explaining why he was rejecting them. The General Division also provided the Claimant with some information about asking for her debt to be written off (cancelled).

[20] There's no arguable case that the General Division member was biased against the Claimant. Nor is there evidence that by ending the hearing in the way it did, the General Division denied the Claimant the opportunity to present more relevant evidence or arguments about the \$2,000 overpayment.

[21] While I too wish that the General Division hearing had unfolded differently, there's no arguable case that the process was unfair to the Claimant.

### **There's no arguable case that the General Division made an error of law or fact about the \$2,000 overpayment**

[22] In response to the COVID-19 pandemic, the federal government hastily rolled out a series of benefits to try and help people in Canada who suddenly and unexpectedly found themselves without work. While these programs shared some similarities with the Employment Insurance (EI) scheme, they also had some important differences.

[23] In this case, the General Division concluded that the Claimant was overpaid \$2,000 in Employment Insurance Emergency Response Benefits (EI-ERB). Like with regular EI benefits, EI-ERB was claims-based. This means that people had to file claims to get benefits.<sup>7</sup> But unlike regular EI, the law expressly allowed the Commission to pay EI-ERB in advance.<sup>8</sup> The Commission did this by paying a \$2,000 advance to most applicants shortly after receiving their initial application.

---

<sup>7</sup> See sections 153.7(1) and 153.8 of the *Employment Insurance Act* (EI Act).

<sup>8</sup> See section 153.7(1.1) of the EI Act.

[24] In this case, the General Division concluded that the Claimant applied for and received 10 weeks of EI-ERB. However, she also received the \$2,000 advance payment of EI-ERB. The Commission said that it would have recovered the advance payment by withholding benefits in later months. However, the Claimant didn't receive benefits for long enough. As a result, the Commission said that it overpaid the Claimant and that she should repay the advance payment.

[25] The General Division agreed and dismissed the Claimant's appeal on this issue.

[26] There's no arguable case that the General Division decision is based on a serious mistake about the facts of the case or that it contains an error of law. The essential facts are as follows:

- The Commission paid the Claimant \$7,000 in EI-ERB;<sup>9</sup>
- This is equivalent to 14 weeks of benefits;<sup>10</sup> and
- The Claimant applied for 10 weeks of benefits and then returned to work.

[27] The Claimant has not pointed to any unpaid claims (or weeks of unemployment, even) that would entitle her to more than 10 weeks of EI-ERB.

[28] Indeed, the Claimant acknowledged being overpaid. She said that she offered to repay the benefits sooner but was told that Service Canada wasn't accepting repayments at that time. Having refused to accept her repayment offers, the Claimant argued that the Commission shouldn't be allowed to wait years before send her a notice of debt.

[29] While I sympathize with the Claimant's situation, her argument has no reasonable chance of success. As the General Division highlighted in paragraph 14 of its decision, the law gives the Commission up to 36 months to reassess a person's case. Here, benefits were paid to the Claimant from April to June 2020, and the

---

<sup>9</sup> See page AD1-28 of the appeal record.

<sup>10</sup> Section 153.10(1) of the EI Act says that EI-ERB is paid at \$500/week.

Commission issued its notice of debt in March 2022, within the three-year time limit that applies to these situations.<sup>11</sup>

[30] Plus, if a person receives an amount of EI-ERB beyond what they were eligible to receive, the law clearly says that they must repay the excess.<sup>12</sup>

[31] The Claimant also denied receiving EI-ERB. She said she received regular EI or Canada Emergency Response Benefits (CERB) instead. The Claimant's confusion is understandable. The Commission's documents are covered in references to CERB.<sup>13</sup>

[32] Nevertheless, the Claimant's argument has no reasonable chance of success.

[33] The General Division dealt with this confusion in footnote 1 of its decision. It explained that, given the large influx of applications that the government was expecting to receive, it created two nearly identical programs: CERB and EI-ERB. In an attempt to avoid confusion, it often referred to both programs as CERB. However, that strategy sometimes resulted in more confusion, as it did in this case.

[34] The General Division clearly had evidence on which to base its conclusion that the Claimant received EI-ERB.<sup>14</sup> Plus, the Claimant's application for EI benefits was legally deemed to be an application for EI-ERB.<sup>15</sup>

[35] As a result, there's no arguable case that the Claimant received a benefit other than the EI-ERB.

### **There are no other reasons for giving the Claimant permission to appeal**

[36] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division

---

<sup>11</sup> See pages GD3-22 to 24 and GD3-27 of the appeal record.

<sup>12</sup> See section 153.1301 of the EI Act.

<sup>13</sup> See, for example, pages GD3-26 to 41 of the appeal record.

<sup>14</sup> See, for example, page GD3-22 of the appeal record.

<sup>15</sup> See section 153.1310 of the EI Act.

decision.<sup>16</sup> The General Division summarized the law and used evidence to support its decision. I didn't find evidence that the General Division might have ignored or misinterpreted.

[37] As part of my review, I also considered the T4E slip that the Claimant has long complained about and described as the source of her problems.<sup>17</sup> While the Appeal Division doesn't normally consider new evidence, this document relates to one of the Claimant's natural justice arguments.<sup>18</sup>

[38] This appeal is about benefits that the Commission paid to the Claimant in the year 2020. However, the T4E that the Claimant is concerned about is from the 2022 taxation year.<sup>19</sup> As a result, it's not relevant to any of the issues that are within the scope of this appeal.

## Conclusion

[39] I've concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

[40] While the Claimant was overpaid \$2,000 in benefits, the Commission has already recovered some of that debt. However, there's been an unusual amount of confusion, even around the amount that the Commission is asking the Claimant to repay. I understand that the Claimant's outstanding balance is \$1,878.<sup>20</sup> The General Division

---

<sup>16</sup> The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

<sup>17</sup> See page AD10-16 of the appeal record.

<sup>18</sup> See the exceptions set out in *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 35-39.

<sup>19</sup> Adding to the confusion, the Commission paid precisely \$7,000 in EI benefits to the Claimant in taxation years 2020 and 2022. But only the Claimant's 2022 T4E slip has the 30% repayment rate that she's concerned about: compare pages GD3-34 and GD3-38 of the appeal record in file AD-23-877.

<sup>20</sup> See pages AD3-4 (paragraph 9), AD5-2, and AD15-1 of the appeal record.



has also provided the Claimant with some information about payment plans and debt relief, should she choose to pursue those options.<sup>21</sup>

Jude Samson  
Member, Appeal Division

---

<sup>21</sup> See paragraph 33 of the General Division decision.