



Citation: *CY v Canada Employment Insurance Commission*, 2024 SST 287

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

# **Leave to Appeal Decision**

**Applicant:** C. Y.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 13, 2024  
(GE-24-76)

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**Tribunal member:** Janet Lew

**Decision date:** March 20, 2024

**File number:** AD-24-144

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, C. Y. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant received earnings that had to be allocated. The allocation resulted in an overpayment of benefits that he is expected to repay.

[3] The Claimant suggests that the General Division should have reduced the amount of the overpayment. He says the Social Security Tribunal should be fair to him and let him pay only half the overpayment. He says it should have considered his standing as a law abiding and taxpaying citizen. In other words, the Claimant is arguing that the General Division failed to exercise its jurisdiction when it did not reduce the amount of his overpayment.

[4] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</sup>

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

## Issue

[6] Is there an arguable case that the General Division failed to reduce the amount of the Claimant's overpayment of benefits?

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<sup>1</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

## **Analysis**

### **I am not giving the Claimant permission to appeal**

[7] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.<sup>3</sup>

[8] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.<sup>4</sup>

### **The Claimant does not have an arguable case that the General Division member failed to reduce the amount of the overpayment**

[9] The Claimant does not have an arguable case that the General Division failed to exercise its jurisdiction when it refused to reduce the amount of the overpayment of benefits. The General Division simply does not have any power to reduce the amount of an overpayment for compassionate or sympathetic reasons.

[10] The Claimant argued for a reduction in the amount of the overpayment of benefits that he owes. The General Division explained that it could not reduce the amount because it does not have any authority to do this. The General Division noted that the Federal Court of Appeal has consistently said that the Board of Referees and Umpires (the predecessors to the General Division and the Appeal Division) lack jurisdiction to write off or reduce overpayments for compassionate or sympathetic reasons.<sup>5</sup>

[11] If the Respondent, the Canada Employment Insurance Commission (Commission), and General Division had incorrectly allocated the Claimant's earnings,

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<sup>3</sup> See section 58(1) of the DESD Act.

<sup>4</sup> See section 58(1)(c) of the DESD Act.

<sup>5</sup> See General Division decision, at para 19.

that could have led to a reduction in the amount of the overpayment. But that did not happen in this case. And the Claimant does not challenge the allocation either.

[12] The General Division appropriately noted the scope of its jurisdiction. For this reason, I am not satisfied that there is an arguable case that the General Division should have reduced the amount of the Claimant's overpayment.

### **The Claimant's Options**

[13] The General Division also wrote that the Claimant could approach the Commission about writing-off the amount of the overpayment altogether. He would have to specifically ask for a "write-off" and specify the basis for his request (e.g., because of financial hardship).

[14] Typically, a claimant makes such requests to the Canada Revenue Agency (CRA). CRA assesses a debtor's financial situation and then makes a recommendation to the Commission on whether the overpayment should be written off. The Commission is responsible for making the final decision.

[15] If the Claimant looks at the Commission's Notice of Decision dated November 15, 2023, he will see that it says that if repaying the overpayment causes him financial hardship, he can contact CRA at the telephone number on the Notice of Debt.<sup>6</sup>

[16] The Notice of Debt says that the Claimant can phone 1-866-864-5823 (toll-free) to make a repayment agreement.<sup>7</sup> This could mean, for example, that the Claimant can ask to have the overpayment collected over a long period of time. This would reduce the monthly collection amount of the overpayment.

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<sup>6</sup> See Notice of Decision dated November 15, 2023, at GD 3–172.

<sup>7</sup> See Notice of Debt, at GD 3–160.

## **Conclusion**

[17] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division