



Citation: *JO v Canada Employment Insurance Commission*, 2024 SST 309

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 19, 2024
(GE-23-3422)

Tribunal member: Stephen Bergen

Decision date: **March 25, 2024**

File number: AD-24-139

Decision

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

Overview

[2] J. O. is the Applicant. I will call her the Claimant because this application concerns her claim for the Employment Insurance Emergency Response Benefit (EI-ERB).

[3] Under the EI-ERB 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 Respondent, the Canada Employment Insurance Commission (Commission), advanced the Claimant \$2000.00 against EI-ERB benefits to which she was expected to 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. However, she returned to work before claiming any of the weekly EI-ERB benefits. The Commission did not have a chance to recover the advance, so it sent the Claimant a Notice of Debt on September 11, 2021, for the full \$2000.00. It followed this up with an October 21, 2021, letter requesting more information so that it could determine if there were other weeks of benefits that the Claimant could have received.

[5] The Claimant filed a request for reconsideration on November 10, 2021. The Commission did not complete its reconsideration until November 2023, but it decided to change its decision based on new information from the Claimant. It reduced her indebtedness to \$1000.00.

[6] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal. By this time, the Commission's position had changed. In its

¹ See 153.7(1.1) of the EI Act.

submissions to the General Division hearing, it conceded that the Claimant would have been entitled to an additional week of EI-ERB. It also agreed that this should also be offset against the \$2000.00 advance. This would further reduce to \$500.00, the amount of the advance that the Claimant was expected to repay.

[7] The General Division accepted this modification to the Commission's position and confirmed that the Claimant still had to repay \$500.00 of the advance. It otherwise dismissed her appeal. The Claimant is now seeking leave to appeal to the Appeal Division.

[8] I am refusing leave to appeal because the Claimant has no reasonable chance of success in her appeal. She has not made out an arguable case that the General Division made an error that I can consider.

Issue

[9] The issue in this appeal is:

- a) Is there an arguable case that the General Division made an error of law by failing to consider that more than three years have elapsed since she was separated from her employment?²

I am not giving the Claimant leave to appeal

General Principles

[10] For the Claimant's application for leave to appeal to succeed, her 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.

[11] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.

² The Claimant references section 46.01 of the Employment Insurance Act.

- 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.³

[12] 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.”⁴

[13] The Claimant’s application to the Appeal Division did not identify any error that I may consider in the course of the appeal. She stated that she was confused about what the Commission had done, and expected that the Tribunal should take into consideration how much it was costing her to deal with the issue.

[14] I wrote to her on March 5, 2023, to highlight the grounds of appeal, and to ask that she explain why she is appealing. She responded on March 12 and 19, 2024. She reiterated that she did not understand what the Commission (Service Canada) was doing and that she was concerned about collection efforts and tax implications.

Error of law

[15] She also pointed to section 46.01 of the EI Act, saying that she should not have to pay anything back because more than 3 years had elapsed since she received the advance.

[16] There is no arguable case that the General Division made an error of law by failing to consider or apply section 46.01 of the EI Act.

[17] Section 46.01 has nothing to do with her circumstances. It speaks of amounts payable under section 45 or section 46(1). Section 45 is about repayments of benefits

³ 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).

⁴ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

because a claimant later receives earnings from an employer that relate to the same period that they received benefits. Section 46(1) has to do with an employer's obligations to determine and pay to the Receiver General the amount that a claimant would otherwise have to repay under section 45.

[18] Fortunately for the Claimant, there was no other limitation period to prevent the Commission from changing its decision in response to the Claimant's request for reconsideration.

[19] The Commission's original decision was that the Claimant owed the full \$2000.00. When it reconsidered, it agreed that the Claimant would have been entitled to an additional \$1000.00 weeks of EI-ERB benefits, if she had claimed them—which could be offset against what she owed. When the Commission considered its response to her General Division appeal, it conceded that her indebtedness should be reduced by a further \$500.00. This was because of recent court decisions which interpreted the EI-ERB eligibility criteria in such a way that the Claimant would be eligible to another week of EI-ERB benefits.

[20] The General Division had no jurisdiction to consider how CRA collects her debt or the tax implications of the advance, the benefit week offsets, or the amount she still owes. This does not describe an error that I may consider.

[21] The Claimant has not pointed to any other error that I may consider. Her appeal has no reasonable chance of success.

Conclusion

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

[23] The Claimant will have to speak to the Commission and/or CRA to determine what is going on with the collection of her overpayment.

Stephen Bergen
Member, Appeal Division