



Citation: *SH v Canada Employment Insurance Commission*, 2024 SST 352

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: S. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 7, 2023
(GE-23-2938)

Tribunal member: Stephen Bergen

Decision date: **April 9, 2024**

File number: AD-23-1122

Decision

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

Overview

[2] S. H. is the Applicant. I will call him the Claimant because this application concerns his claim for the Employment Insurance benefits.

[3] The Claimant applied for regular EI benefits in March 2020, but received the Employment Insurance Emergency Response Benefit (EI-ERB).

[4] All claims between March 15, 2020, and September 26, 2020, were processed as EI-ERB claims. Claimants who met the requirements of the EI-ERB program were entitled to a \$500.00 weekly benefit. To get support to claimants quickly, the law authorized the Commission to immediately prepay benefits. The Respondent, the Canada Employment Insurance Commission (Commission), advanced the Claimant \$2000.00 against the EI-ERB benefits to which he 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.

[5] The Claimant received the \$2000.00 advance and seven weeks of EI-ERB benefits between March 22, 2020, and May 9, 2020, when he returned to work for a short period. The Claimant claimed, and was paid, another five weeks of EI-ERB benefits from June 21, 2020, to July 25, 2020. The Claimant returned to work full time on July 27, 2020, before the Commission had the chance to recover any part of the advance. The Commission sent him a Notice of Debt on May 21, 2022, for the full \$2000.00 of the advance.

[6] The Claimant filed a request for reconsideration which is dated June 8, 2022. That request is date-stamped as being received by Service Canada on November 23, 2022. It does not appear the Commission responded to the request, but the Claimant filed a second request on May 26, 2023. When the Commission completed its reconsideration, it did not change its original decision.

[7] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal (Tribunal), but the General Division dismissed the appeal. The Claimant is now seeking permission to appeal to the Appeal Division.

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

Preliminary matters

[9] I convened a case conference on March 28, 2024, at which time the Commission confirmed that it could not find any additional weeks in which the Claimant would have been entitled to the EI-ERB if he had claimed it. As a result, it could not justify reducing or cancelling the overpayment for the advance.

Issues

[10] Is there an arguable case that the General Division made an error of jurisdiction or law by failing to consider an offset of his advance overpayment against a shortfall in the payment of benefits in a later claim?

I am not giving the Claimant permission to appeal

General Principles

[11] 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.

[12] 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.¹

[13] 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.”²

[14] Neither the Claimant’s December 12, 2023, application to the Appeal Division, nor the supplemental materials the Claimant forwarded on December 21, 2023, identified any error that I may consider in the course of the appeal.

[15] However, the Claimant seemed to be speaking of another claim that started on October 18, 2020, noting that the overpayment was “negated” by his second layoff on October 16, 2020. He highlighted a part of the General Division decision where the member stated that he was only considering information on the EI-ERB claim established on March 22, 2020.

[16] On the basis of these materials, and the Claimant’s comments in the Case Conference, it seems that the Claimant was primarily concerned with his entitlement to benefits under a subsequent claim.

[17] Following the Case Conference, I gave the Claimant the opportunity to explain why he thought the General Division should have considered his other claims or any issue not included in the July 5, 2023, reconsideration decision.³ The Claimant provided additional information to the Tribunal on April 4, 2024, in connection with his assertion that he was owed additional weeks of benefits under a different claim. He did not provide arguments related to how the General Division interpreted the law or its jurisdiction.

¹ 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).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ See AD2-2.

[18] I will consider whether there is an arguable case that the General Division made an error of jurisdiction by not considering any subsequent claim, or made an error of law by not offsetting his overpayment in one claim against some shortfall in benefits from a later claim.

Error of jurisdiction or law

[19] There is no arguable case that the General Division made an error of jurisdiction or of law.

[20] The General Division's jurisdiction is limited by the *Employment Insurance Act* (EI Act). It may only consider those issues set out in the reconsideration decision.⁴ In this case, the issues arise out of the July 5, 2023, reconsideration decision (attached to his Notice of Appeal).⁵ The reconsideration decision maintained the original decision on the EI-ERB advance payment. This meant that it still required the Claimant to repay the \$2000.00 advance.

[21] The General Division could only consider whether the Claimant had to repay the Commission for the advance. It had no jurisdiction to consider other issues or other decisions, and it could not consider whether he had some other entitlement under another claim that could be applied to offset the debt. Because it had no jurisdiction over other claims, it could not have made an error of law by failing to consider what he might or might not owe the Commission when both claims are considered together.

[22] The purpose of the March 28, 2024, case conference was to see if some resolution was possible **outside the regular appeal process**.

[23] The Commission has a policy by which it is sometimes permitted to offset unpaid weeks of entitlement to reduce or eliminate the \$2000.00 advance. Because of the way the EI-ERB rolled out, the Commission policy recognizes that some claimants may not have understood that they were entitled to claim certain weeks of benefits. The policy

⁴ See sections 112 and 113 of the EI Act.

⁵ See GD2-18.

allows the Commission to offset the advance overpayment against those other weeks of entitlement.

[24] During the Case Conference, we explored whether the Commission could do that in this case, but the Commission said that it was not possible.

[25] The Commission's policy is specific to the EI-ERB program. It only allows the Commission to offset additional weeks of **EI-ERB benefit** entitlement against the advance. The Claimant could not have had unclaimed weeks of EI-ERB entitlement at any time after his October 16, 2022, layoff because his new claim was established for regular benefits.

Conclusion

[26] I am refusing permission to appeal. The appeal will not proceed.

[27] If the Claimant disagrees with a decision under a different claim or believes he has additional entitlement under a different claim, he may wish to approach the Commission. He can ask the Commission to consider, or reconsider (as the case may be), his entitlement under the appropriate claim.

[28] I also note that the Claimant's materials included a request for forgiveness of debt.⁶ Neither the General Division nor the Appeal Division has the power to forgive a debt. The Commission has the power to write off debt in certain circumstances, so the Claimant may wish to approach the Commission about this as well.⁷ If the Commission refuses to write off the debt, it is not permitted to reconsider its decision. That means its decision cannot be appealed to the Tribunal.⁸

Stephen Bergen
Member, Appeal Division

⁶ AD3-8.

⁷ See section 56 of the *Employment Insurance Regulations*.

⁸ See sections 112.1 and 113 of the EI Act.