



Citation: *RO v Canada Employment Insurance Commission*, 2024 SST 785

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** R. O.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated May 13, 2024  
(GE-24-711)

---

**Tribunal member:** Stephen Bergen

**Decision date:** July 8, 2024

**File number:** AD-24-402

## **Decision**

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

## **Overview**

[2] R. O. is the Applicant. I will call him the Claimant because he made a claim for Employment Insurance (EI) benefits. During the period in which he was receiving benefits, he mistakenly under-reported his income from other sources. The Respondent, the Canada Employment Insurance Commission (Commission), reviewed his file in 2022 and discovered discrepancies. It decided that the Claimant had been overpaid in December 2023 and sent the Claimant a Notice of Debt for the overpayment in January 2024.

[3] The Claimant asked the Commission to reconsider, but it would not change its decision. He next appealed to the General Division of the Social Security Tribunal, which dismissed his claim. He is now seeking leave to appeal to the Appeal Division.

[4] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

## **Issue**

[5] Is there an arguable case that the General Division made an important error of fact?

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

### **General Principles**

[6] 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.

[7] 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.<sup>1</sup>

[8] 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.”<sup>2</sup>

[9] In his application to the Appeal Division, the Claimant selected the error concerned with an important error of fact.

### **Important error of fact**

[10] There is no arguable case that the General Division made an important error of fact.

[11] The General Division makes an important error of fact when it bases its decision on a finding that ignores or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.<sup>3</sup>

#### **– That the Claimant was overpaid benefits**

[12] There is no arguable case that the General Division made an error of fact when it found that the Claimant had been overpaid benefits between June 2018 and January 2019.

---

<sup>1</sup> 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).

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

<sup>3</sup> I have tried to make this error more understandable. This ground of appeal is defined in section 58(1)(c) of the DESDA. The General Division will have made an error of fact where it, “based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”

[13] The General Division accepted that the Claimant received earnings for working from two employers and that he did not report this income correctly. The Claimant did not dispute this, or challenge the earnings figures reported by his employers. Instead, he argues that he made an honest mistake in how he reported his income so he should not have to repay the overpayment.

[14] None of this points to an error of fact in the General Division decision. The General Division actually agreed with the Claimant that he had thought he was reporting his earnings correctly. However, he was mistaken which meant that he was overpaid as a result. Because he was overpaid, the overpayment was owed as a debt to the Crown.<sup>4</sup>

– **That the Commission could reconsider beyond 36 months**

[15] The General Division also found that the Claimant had given false or misleading answers about his earnings. The decision is clear that the General Division did not feel the Claimant had acted dishonestly, but it noted that his statements were false, nonetheless. The law allows the Commission to go back and reconsider its decisions for up to 72 months when benefits are incorrectly paid as a result of false or misleading statements.<sup>5</sup>

[16] There is no arguable case that the General Division made a mistake in accepting that the Commission was in time to reconsider.

[17] The Claimant has not questioned the time of the original decision, the date of the Commission's reconsideration. He accepts that he made statements to the Commission about his earnings, which he now agrees were false.

---

<sup>4</sup> See sections 45 and 47 of the *Employment Insurance Act* (EI Act).

<sup>5</sup> See section 52(5) of the EI Act.

– **That the Commission acted judicially when it reconsidered the Claimant’s entitlement**

[18] The General Division also noted that the Commission’s decision to reconsider was a discretionary decision. Whenever the Commission uses its discretion, it must do so in a judicial manner.

[19] There is no arguable case that the General Division made an error of fact in finding the Commission to have acted judicially.

[20] The General Division looked at whether the Commission reconsidered in a judicial manner and found that it had done so. It accepted that the Commission had acted in good faith and without an improper purpose, that it had not acted in a discriminatory fashion, and that it considered the relevant factors only. These are the correct criteria by which the Tribunal must evaluate whether the Commission has acted judicially.<sup>6</sup>

[21] The Claimant did not suggest that the General Division ignored or misunderstood any evidence that was relevant to any of the criteria, or its finding that the Commission acted judicially.

– **How the additional earnings were allocated to weeks of benefits**

[22] The Claimant has not raised any concerns with the manner in which the General Division reallocated his earnings. I note that the General Division resolved any ambiguous or inconsistent evidence in the Claimant’s failure.

– **That the Commission should have written off the Claimant’s debt**

[23] There is no arguable case that the General Division made a mistake of fact by not finding the Claimant entitled to a write-off.

[24] The General Division understood that the Claimant believed the Commission should have caught the error earlier, when it would have created less of a problem for

---

6

him. However, the General Division did not have the authority to write off the Claimant's debt or to direct the Commission to write off the debt.

[25] In some circumstances, the Commission may write off a debt. But this is the Commission's decision. Once it refuses to write-off a debt, it is not permitted to reconsider its decision.<sup>7</sup> Since it cannot reconsider its decision, its refusal cannot be appealed to the General Division. The General Division has jurisdiction to consider only the issues arising from the Commission's reconsideration decision that is on appeal.<sup>8</sup>

– **The Commission's clerical error**

[26] The Claimant told the General Division that the Commission had made an error with his name and social security number (SIN). In his application for leave to the Appeal Division, he again said that the Commission had misspelled his name and cited an incorrect social insurance number.

[27] The General Division made a brief reference to the Commission's clerical error, saying that case law has said such errors are not fatal to the decision. But, regardless of whether the General Division was mistaken about the clerical error or did not describe it in detail, there is no arguable case that the General Division made an important error of fact concerning these Commission mistakes.

[28] As I noted earlier in the decision, I can only find that the General Division made an important error of fact if it ignored or misunderstood evidence that was relevant to one of the General Division's findings.

[29] The Claimant has not shown how the misspelled name and incorrect SIN could have affected the decision. The most foundational finding in the decision was that the Claimant was overpaid. This finding was based on the evidence of the Claimant's earnings when he was receiving benefits. However, the Claimant did not dispute the

---

<sup>7</sup> See section 112.1 of the Employment Insurance Act.

<sup>8</sup> See section 113 of the EI Act.

earnings that resulted in his overpayment. He did not argue that the recorded earnings belonged to some other person (with a similar name and different SIN).

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

## **Conclusion**

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

Stephen Bergen  
Member, Appeal Division