



Citation: *JG v Canada Employment Insurance Commission*, 2024 SST 1168

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
September 13, 2024 (GE-24-2586)

Tribunal member: Glenn Betteridge

Decision date: October 2, 2024

File number: AD-24-640

Decision

[1] I am not giving J. G. permission to appeal.

[2] This means his appeal won't go forward, and the General Division decision stands unchanged.

Overview

[3] J. G. is the Claimant. He made a claim for Employment Insurance (EI) benefits in April 2020. This was at the beginning of the COVID-19 pandemic in Canada.

[4] The Canada Employment Insurance Commission (Commission) paid him the EI Emergency Response Benefit (EI ERB). It paid him \$7,000 in total—a \$2,000 advance payment plus 10 weeks of benefits at \$500 per week.

[5] The Claimant went back to work in late June 2020.

[6] In 2021, the Commission sent him a notice of debt for \$2,000. The Commission says it wasn't able to recover the advance payment from him. He went back to work before it could do that. The Commission upheld its decision on reconsideration.

[7] The Claimant appealed to this Tribunal's General Division. The General Division decided that the Claimant's overpayment should be \$1,000.

[8] The Claimant has asked for permission to appeal the General Division decision. To get permission, he has to show his appeal has a reasonable chance of success. Unfortunately for him, he hasn't.

Issues

[9] I have to decide two issues.

- Is there an arguable case the General Division decided an issue it should not have decided, or didn't decide an issue it should have decided? In law, this is called a jurisdictional error.

- Is there an arguable case the General Division made any other error the law lets me consider?

I am not giving the Claimant permission to appeal

[10] I reviewed the General Division appeal file.¹ I listened to the recording of the General Division hearing and read its decision. I have also reviewed the Claimant's Appeal Division application.²

[11] I can't give the Claimant permission to appeal, for the reasons that follow.

The test for getting permission to appeal

[12] To get permission, the Claimant's appeal has to have a reasonable chance of success.³ This means he has to show there is an arguable case the General Division made an error the law lets me consider—it used an unfair process, or made a legal error, an important factual error, or a jurisdictional error.⁴

[13] This test is easy to meet.

There isn't an arguable case the General Division made a jurisdictional error

[14] The General Division makes an error if it acts beyond or refuses to exercise its decision-making power.⁵ In other words, the General Division makes an error if it decides an issue, it has no power to decide or doesn't decide an issue it has to decide.

¹ See GD2, GD3, and GD4.

² See AD1.

³ Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says that I have to give permission to appeal if the appeal has a reasonable chance of success. This means the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

⁴ These are the grounds of appeal in section 58(1) of the DESD Act. I refer to these grounds as errors.

⁵ Section 58(1)(a) of the DESD Act says it's a ground of appeal where the General Division acts beyond or refuses to exercise its jurisdiction.

[15] On his appeal form, the Claimant checked the box that says the General Division made an error of jurisdiction.⁶

[16] Then he writes that none of the errors on the form accurately addresses his issue.

[17] I agree.

[18] The General Division decided the issues it had to decide. And it didn't decide any issues it had no power to decide. So, there isn't an arguable case the General Division made a jurisdictional error.

There isn't an arguable case the General Division made any other error the law lets me consider

[19] The Claimant is representing himself. So, I looked to see if there was an arguable case the General Division made any of the other errors the law lets me consider.⁷

[20] Simply disagreeing with the General Division's findings, or the outcome of the appeal, isn't a valid ground of appeal.⁸ This is essentially what the Claimant is arguing. And like a court, the Tribunal is bound by the law. It must apply the law and cannot act just on the basis of fairness.⁹

[21] The Claimant argues the General Division should have calculated his overpayment taking into account his lost employment income. He sets out the calculation he says the General Division should have used. It is based on the difference between what he got in EI ERB and the employment income he lost when he didn't

⁶ See AD1-2.

⁷ Where a self-represented claimant is asking for permission to appeal a General Division decision, I should not apply the permission to appeal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017, FC 391.

⁸ See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

⁹ See *Al-Harbawi v Canada (Attorney General)*, 2024 FCA 148 at paragraph 11.

work. He says he should not be pushed further into debt. He says his overpayment should be \$335, not the \$1,000 the General Division decided.

[22] The Claimant made a similar argument at the General Division. And the General Division rejected it for good reason.¹⁰

[23] The Claimant's argument about the General Division's error isn't based in the law that it had to apply—the EI ERB sections of the *Employment Insurance Act*. He wants the law to be something different than it is.

[24] The General Division correctly set out the law about the EI ERB and overpayments.¹¹ And it applied that law to the facts in the Claimant's case to reach its decision, without ignoring or misunderstanding any relevant evidence.¹²

[25] The Claimant hasn't argued the General Division process or hearing was unfair. And I didn't see or hear any evidence of procedural unfairness.

[26] So, the Claimant hasn't shown an arguable case the General Division made any of the other errors the law lets me consider.

Conclusion

[27] The Claimant's appeal doesn't have a reasonable chance of success. This means I can't give him permission to appeal.

Glenn Betteridge
Member, Appeal Division

¹⁰ See the General Division decision at paragraphs 33 and 34.

¹¹ See the General Division decision at paragraphs 4, 10, 15, 16, 26, and 30.

¹² See the helpful table the General Division set out in paragraph 25 of its decision, to show the outcome when it applied the law to the Claimant's circumstances in paragraphs 18 to 24.