



Citation: *DS vs Canada Employment Insurance Commission*, 2024 SST 1317

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

# **Leave to Appeal Decision**

**Applicant:** D. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 13, 2024  
(GE-24-2965)

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**Tribunal member:** Elizabeth Usprich

**Decision date:** October 30, 2024

**File number:** AD-24-607

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] D. S. is the Applicant. During the Covid-19 pandemic, he was receiving Employment Insurance (EI) benefits.

[3] Unfortunately, his grandmother, who lived overseas, became ill. Based on information he received from the Canada Employment Insurance Commission (Commission), the Applicant left Canada to be with his sick grandmother.

[4] The Commission denied the Applicant benefits for the time he was out of Canada, said he wasn't available for work, and imposed a monetary penalty. The Applicant asked the Commission to reconsider.

[5] On reconsideration, the Commission allowed the Applicant one week of benefits because the reason he was out of Canada is an exception in the EI Regulations.<sup>1</sup> The Commission removed the penalty. The rest of the time the Applicant was out of Canada remained as a disentitlement to EI benefits.

[6] The Applicant appealed this to the Social Security Tribunal (Tribunal) General Division. The General Division decided the Applicant was available while he was out of Canada. But it also said the Applicant was disentitled to EI benefits for the time he was out of Canada except for the one week that is allowed in the EI Regulations. The Applicant has asked for permission to appeal to the Appeal Division.

[7] I am denying the Applicant's request for permission to appeal because there is no reasonable chance of success.

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<sup>1</sup> See section 55(1)(d) of the *Employment Insurance Regulations*.

## Preliminary matters

### – The Applicant didn't specify an error the General Division made

[8] The Applicant didn't give an explanation about his reason for appealing. On September 19, 2024, I wrote the Applicant and said, "explain in detail why you are appealing the decision of the General Division."<sup>2</sup> The letter had the errors I can consider. I have considered the response the Applicant sent.

## Issue

[9] Is there an arguable case that the General Division made an error of jurisdiction when it didn't write-off the amount the Applicant owes?

## I am not giving the Applicant permission to appeal

[10] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.<sup>3</sup> I have to be satisfied that the appeal has a reasonable chance of success.<sup>4</sup> There has to be an arguable ground upon which the appeal might succeed.<sup>5</sup>

[11] There are only certain grounds of appeal that the Appeal Division can consider.<sup>6</sup> Briefly, the Applicant has to show the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it should not have or didn't decide an issue it should have. This is also called an error of jurisdiction.
- It made an error of law.
- It based its decision on an important error of fact.

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<sup>2</sup> Under section 4 of the Notice of Appeal to the Appeal Division, it explains that permission to appeal must first be granted. It says there must be an arguable case the General Division made an error and lists what errors can be considered. See AD1-3 for the Application form the Applicant filled out.

<sup>3</sup> See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).

<sup>4</sup> See section 58(2) of the DESD Act.

<sup>5</sup> See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13; *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.

<sup>6</sup> See section 58(1) of the DESD Act. The grounds listed can also be called errors.

[12] So, for the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any one of those grounds.

[13] The Applicant checked the box that the General Division made an error of jurisdiction. The Applicant doesn't dispute he was out of Canada. He is requesting a write-off of the overpayment assessed against him.<sup>7</sup>

**There is no arguable case that the General Division made an error of jurisdiction when it didn't write-off the amount the Applicant owes to the Commission**

[14] The Applicant hasn't changed his position. He has reviewed the same facts he told the Commission and the General Division.<sup>8</sup> The Applicant checked the box that the General Division made a jurisdictional error. But the Applicant hasn't said how the General Division made that error.

[15] The Applicant is not disputing he was out of Canada. I understand he first called the Commission to make sure leaving Canada would not disrupt his EI benefits. Unfortunately, the General Division couldn't consider that. It could only consider what the law says.<sup>9</sup> The General Division was correct when it decided the Applicant could only have the one-week exception that is in the EI Regulations.<sup>10</sup>

[16] The General Division decided in the Applicant's favour that he was available while he was out of Canada. So, it is assumed the Applicant is not challenging this.

[17] This leaves the overpayment the Applicant must pay back.<sup>11</sup> He says it will create a significant burden for him if he is forced to pay it. He stressed that these issues arose during the Covid-19 pandemic. He asks for the amount he owes to be waived.

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<sup>7</sup> See AD1B-2 the Applicant's explanation about his reason for appeal.

<sup>8</sup> See GD3-19 and GD3-20 the Applicant's request for the Commission to reconsider his claim. See also GD2-6 the Applicant's Notice of Appeal to the General Division with his reasons for appeal.

<sup>9</sup> See the General Division decision at paragraphs 45 and 47.

<sup>10</sup> See section 55(1)(d) of the *Employment Insurance Regulations*. See also the General Division decision at paragraphs 42 and 46.

<sup>11</sup> See AD1B-2 the Applicant's explanation about his appeal.

[18] I believe the Applicant's argument is that the General Division didn't decide something it should have. But the General Division doesn't have the authority to make the decision the Applicant is asking for.

[19] It is the Commission that has the authority to write off any amount payable.<sup>12</sup> It can also decide whether it will write off an amount owed.<sup>13</sup> The Tribunal doesn't have the power to review this type of decision. This means the General Division had no authority to make a decision about a write-off. So, there is no arguable case that it made a jurisdictional error when it refused to do so.

[20] My decision may be disappointing for the Applicant. If the Applicant hasn't done so, he can still ask the Commission to consider writing off the debt. If the Applicant has asked the Commission for a write-off of the overpayment and the Commission has refused to do so, the Applicant could pursue the matter at the Federal Court.

– **There are no additional errors in the General Division decision**

[21] Because the Applicant is self-represented, I took my own look at the appeal. I have reviewed the file, listened to the hearing recording, and looked at the decision the Applicant is appealing. I haven't found any reviewable error that the General Division may have made.<sup>14</sup>

## **Conclusion**

[22] Permission to appeal is refused. This means that the appeal will not proceed.

Elizabeth Usprich  
Member, Appeal Division

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<sup>12</sup> Under section 112.1 of the EI Act, the Commission is the one that has the jurisdiction to write off any amount owing. Further, a decision made by the Commission about a write-off is not subject to review. This means the Tribunal can't review this type of decision.

<sup>13</sup> See section 56 of the *Employment Insurance Regulations*. This section includes whether the debtor (the original claimant) made the error or gave false or misleading information; whether the repayment of the amount would result in undue hardship to the debtor. There are also other factors that may apply.

<sup>14</sup> The Federal Court has said I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.