



Citation: *JB v Canada Employment Insurance Commission*, 2024 SST 1299

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

# **Leave to Appeal Decision**

**Applicant:** J. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
October 7, 2024 (GE-24-2792)

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**Tribunal member:** Glenn Betteridge

**Decision date:** October 25, 2024

**File number:** AD-24-692

## Decision

[1] I am not giving J. B. permission to appeal the General Division decision.

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

## Overview

[3] J. B. is the Claimant. They stopped work and applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) paid benefits.

[4] Later, the Commission reviewed the claim.<sup>1</sup> It found the Claimant didn't report working and earning money on biweekly reports. It allocated and deducted that income from weeks in the EI claim.<sup>2</sup> This created an overpayment of benefits of \$8,334. The Commission also decided the Claimant knowingly made false statements. For that, it imposed a penalty (\$4,176) and issued a notice of violation (very serious).<sup>3</sup> The money became a debt the Claimant owed to the Commission.

[5] The Claimant asked the Commission to reconsider. The Commission upheld its decisions. The Claimant appealed to this Tribunal's General Division.

[6] The General Division dismissed the Claimant's appeal.

[7] The Claimant asked for permission to appeal the General Division decision. To get permission, the appeal has to have a reasonable chance of success. The Claimant disagrees with the debt amount, based on what he says the Commission told him. Unfortunately, the appeal doesn't have a reasonable chance of success.

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<sup>1</sup> The Commission sent the Claimant two decisions letters (see GD3-134 and GD3-140). The second decision letter was based on information the Commission learned about after it sent the Claimant the first decision letter. The Claimant requested a reconsideration after he got the second decision letter (see GD-146). Then the Commission made its reconsideration decision (see GD3-164).

<sup>2</sup> See section 19 of the *Employment Insurance Act* (EI Act) and sections 35 and 36 of the *Employment Insurance Regulations*.

<sup>3</sup> See sections 7.1(4) to (7), and 38 of the EI Act.

## Issues

[8] I have to decide whether the Claimant has shown an arguable case the General Division made an error.

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

[9] I read the General Division decision. I reviewed the documents in the General Division file.<sup>4</sup> And I read the Claimant's application to appeal.<sup>5</sup> I didn't listen to the hearing recording. The application didn't raise any issues that made me think I had to do that to make a justifiable, acceptable, and defensible decision.

[10] I am not giving the Claimant permission to appeal, for the reasons that follow.

### The test for getting permission to appeal

[11] To get permission, the Claimant's appeal has to have a reasonable chance of success.<sup>6</sup> This means the Claimant has to show an arguable case the General Division made one of the errors the law lets me consider.

- The General Division used an unfair process, prejudged the case, or was biased. (This is a procedural fairness or natural justice error.)
- The General Division didn't decide an issue it should have decided, or decided an issue it should not have decided. (This is a jurisdictional error.)
- The General Division made a legal error.
- The General Division made an important factual error.<sup>7</sup>

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<sup>4</sup> See GD2, GD3, GD5, GD5, and GD10.

<sup>5</sup> See AD1.

<sup>6</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) and *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>7</sup> These are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.

## **The Claimant hasn't shown an arguable case the General Division made an error**

[12] The Claimant didn't check any of the error boxes on the application form. The Claimant is challenging the debt amount.<sup>8</sup> The Claimant argues a Commission agent (S.) said it reduced the debt from \$28,000 to approximately \$5,000. But after making a payment, the Canada Revenue Agency statement showed the debt was back to \$28,000.

[13] The Claimant's reasons don't point to an error the General Division made. The Claimant is making the same argument they made at the General Division.

[14] The Appeal Division process isn't the Claimant's chance to reargue the General Division appeal, hoping for a different result.<sup>9</sup> I can't reweigh the evidence.<sup>10</sup>

[15] The Claimant is self-represented. So, I reviewed the General Division decision and file to see whether there was an arguable case it made an error.<sup>11</sup>

[16] There isn't an arguable case the General Division made a jurisdictional error. It correctly identified and decided the issues it had to decide (paragraphs 6 and 7). And it didn't decide an issue it had no power to decide.

[17] The General Division decided the legal issues that led to part of the Claimant's debt:

- Overpayment because of allocation and deduction of earnings: \$8,334
- Penalty for knowingly making 10 false statements on biweekly reports: \$4,167<sup>12</sup>

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<sup>8</sup> See AD1-3 and AD1-4.

<sup>9</sup> See *Bergeron v Canada (Attorney General)*, 2016 FC 220.

<sup>10</sup> See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.

<sup>11</sup> I should not apply the permission to appeal test in a mechanistic manner. 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.

<sup>12</sup> See the Commission's overpayment breakdown at GD3-166. See also the second decision letter at GD3-140, and the Notice of Debt at GD3-143.

[18] The General Division’s decision says the Commission followed the law when it decided these issues.

[19] The General Division didn’t have the power to consider and decide the other issues that added to the Claimant’s debt. The Commission disqualified the Claimant from getting benefits twice because he voluntarily left two jobs. This meant the benefits the Commission paid to him became an \$8,676 overpayment.<sup>13</sup> The Commission added the overpayment to the Claimant’s debt.<sup>14</sup>

[20] The Claimant appealed the Commission’s disqualification decisions to the General Division.<sup>15</sup> The General Division heard and decided the two disqualification appeals. This means the General Division had no power to consider either disqualification—or deal with the \$8,676 overpayment—in this appeal.

[21] There isn’t an arguable case the General Division made a legal error. It correctly stated the law it had to use to decide the earnings and allocation issues (paragraphs 7 to 9, 13, and 16). Then used the correct law. It correctly stated the law it had to use to decide the penalty and violation issues (paragraphs 19 to 24, 30, and 36). Then used the correct law. It made the findings of fact it had to make under those legal tests. And its reasons are more than adequate.

[22] The General Division could not allow the Claimant’s appeal based on the argument the Commission misinformed them about lowering the overpayment to roughly \$5,000.<sup>16</sup> The courts have decided a claimant cannot rely on misinformation from the Commission or its representatives that goes against what the law says.<sup>17</sup> The General Division decision follows the law. In other words, the General Division didn’t make a legal error.

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<sup>13</sup> See GD3-166.

<sup>14</sup> See the Notice of Debt at GD3-145. The reason for the \$8,676 debt is, “An overpayment resulted due to a disqualification.”

<sup>15</sup> See GE-24-2791 and GE-24-2793.

<sup>16</sup> See GD2-4.

<sup>17</sup> See *Puig v Canada (Attorney General)*, 2024 FCA 48 at paragraph 38.

[23] There isn't an arguable case the General Division made an important factual error. I have reviewed the documents the General Division considered. The Claimant admitted he didn't report work and earnings and made false statements. The Commission made notes of how it decided the penalty and violation.

[24] The General Division reviewed the evidence, including the Claimant's testimony (paragraphs 10, 11, 14, 17, 25 to 28, 32, and 33). I didn't find relevant evidence the General Division ignored or misunderstood. This means the relevant evidence supports the General Division's findings and decision.

[25] The Claimant didn't argue the General Division process or hearing was unfair. And I didn't find evidence of that.

– **Summary**

[26] The Claimant hasn't shown (and I haven't found) an arguable case the General Division made an error the law lets me consider.

## **Conclusion**

[27] The Claimant hasn't shown the appeal has a reasonable chance of success. This means I can't give permission to appeal the General Division decision.

Glenn Betteridge  
Member, Appeal Division