



Citation: *AJ v Canada Employment Insurance Commission*, 2025 SST 59

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

# **Leave to Appeal Decision**

**Applicant:** A. J.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 23, 2025  
(GE-25-31)

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**Tribunal member:** Glenn Betteridge

**Decision date:** January 28, 2025

**File number:** AD-25-56

## Decision

[1] Leave (permission) to appeal is refused. The appeal won't go forward.

## Overview

[2] A. J. is the Claimant. She took a leave from work at the beginning of the COVID pandemic in Canada. Then she applied for Employment Insurance (EI) benefits.

[3] The Canada Employment Insurance Commission (Commission) paid her the EI Emergency Response Benefits (EI ERB). It paid her an advance payment for four weeks (\$2,000) then eight weekly payments. It stopped paying her the EI ERB when she went back to work.

[4] Because she went back to work, the Commission could not recover the advance payment (\$2,000). It decided the advance payment was an overpayment and debt.

[5] The General Division of this Tribunal agreed with the Commission and dismissed the Claimant's appeal.

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

## Issue

[7] I have to decide if the Claimant's appeal has a reasonable chance of success.

## I am not giving the Claimant permission to appeal

[8] I read the Claimant's application to appeal.<sup>1</sup> I read the General Division decision. I reviewed the documents in the General Division file.<sup>2</sup> I didn't listen to the hearing

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<sup>1</sup> See AD1.

<sup>2</sup> See GD2 to GD6.

recording. Her application didn't raise any issues that made me think I had to do that to make a justifiable, acceptable, and defensible decision.

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

### **The test for getting permission to appeal**

[10] I can give the Claimant permission to appeal if she shows her appeal has a reasonable chance of success.<sup>3</sup> This means the same thing as an arguable case the General Division made one of the following errors:<sup>4</sup>

- It used an unfair process or was biased.<sup>5</sup>
- It used its decision-making power improperly, called a jurisdictional error.
- It made an important factual error.
- It made a legal error.

[11] I have to start by considering the errors the Claimant set out in her application.<sup>6</sup> Because the Claimant is representing herself, I should not apply the permission to appeal test mechanistically.<sup>7</sup>

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

[12] The Claimant checked the box that says the General Division made an error of jurisdiction.<sup>8</sup> She argues the General Division made an error because it didn't properly

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<sup>3</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>4</sup> The Federal Court has said an appeal has a reasonable chance of success when there is an arguable case the General Division made an error. See *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

<sup>5</sup> The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.

<sup>6</sup> See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.

The Federal Court has said this in decisions like *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>8</sup> See AD1-3.

consider her present circumstances. She says she retired in 2023, has severely decreased income, and can't afford to pay back the debt.

[13] Then she asks the Appeal Division to, “be lenient in the next decision due to undue hardship it would cause the writer at this time in her life.”<sup>9</sup>

[14] The General Division could not decide the Claimant's appeal based on her financial circumstances or general principles of fairness. It had to apply the law. Once the General Division decided the Commission's overpayment decision was legally correct, it had no power to reduce or eliminate her overpayment.

[15] The General Division explained this in its decision (paragraphs 21 to 23).

– **I didn't find an arguable case the General Division made an error**

[16] There isn't an arguable case the General Division made a jurisdictional error. It correctly identified the issues it had to decide (paragraphs 8 and 9). It decided only those issues.

[17] There isn't an arguable case the General Division made a legal error. It identified the correct law and legal tests (paragraphs 3, 4, 11, 14, 19, 21, 22, and 24). Then used them to decide her appeal. And its reasons are more than adequate.

[18] There isn't an arguable case the General Division made an important factual error. It reviewed the evidence (paragraphs 7, 12, 15 to 17, and 24). It weighed the evidence and made findings of fact (paragraphs 10, 12, 13, 18, 19, and 20).

[19] I didn't find any **relevant** evidence the General Division ignored or misunderstood. The Claimant's evidence about her financial circumstances wasn't relevant—not to the legal issues the General Division had to decide, or to the legal tests it had to use to decide those issues. The relevant evidence supports the General Division decision.

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<sup>9</sup> See AD1-3.

[20] The Claimant hasn't argued the General Division acted unfairly or was biased against her. Nothing I saw in the General Division record suggested an arguable case its process was unfair, or it was biased.

[21] Like the General Division, the Appeal Division has to follow the law. I have no power to reduce or eliminate a legally correct overpayment. And I can't give her permission to appeal unless there's an arguable case the General Division made an error.

## Conclusion

[22] The Claimant hasn't shown an arguable case the General Division made an error. And I didn't find an arguable case.

[23] This means I can't give her permission to appeal. The General Division decision stands unchanged.

[24] I have no doubt when the Claimant says paying back the debt would cause her financial hardship. If she can't afford to pay back her debt, she can contact the **Canada Revenue Agency (CRA) Collection Service Centre at 1-866-864-5841**. She can try to negotiate a payment plan or **apply for relief from her debt based on her financial hardship**.

[25] The CRA will consider her current income and expenses—in other words, her changed financial circumstances—if she applies for relief based on financial hardship. Here is its debt collection policy: [www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2/ic13-2r1-government-programs-collection-policies.html](http://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2/ic13-2r1-government-programs-collection-policies.html).

[26] The Claimant lives in Ontario. She might qualify for free legal information, advice, or other help from a community legal clinic funded by Legal Aid Ontario. To find her local community legal clinic, she can go to [www.legalaid.on.ca/legal-clinics/](http://www.legalaid.on.ca/legal-clinics/).

Glenn Betteridge  
Member, Appeal Division